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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 344

ARTHUR L. BELL, INDIVIDUALLY, AND AS AN ASSOCIATE OF AND DIVISION SUPERINTENDENT OF "MANKIND UNITED," ETC., ET AL., PETITIONERS,

vs.

R. B. HOOD, THEODORE CRUISE, PHILIP BOWSER, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 20, 1945.

CERTIORARI GRANTED OCTOBER 22, 1945.

No. 10790

United States

Circuit Court of Appeals

For the Ninth Circuit.

ARTHUR L. BELL, individually, and as an Associate of and Division Superintendent of "Mankind United", a Voluntary Association, for and in behalf of said "Mankind United" and The Associates thereof; Maude Askew, Eugene Wadsworth Brown, J. Fred Burkey, Lawrence Cook, A. Ray Elsea, Jacob Gloeckler, Bay Burns Sharp, Shanna Jakeman, Pauline Kelso, Max Theodore Miller and Homer G. Wilcox,

Appellants,

vs.

R. B. HOOD, THEODORE CRUISE, PHILIP BOWSER, GEORGE M. LANGDON, WILLIAM GIESON, EUGENE GREER, J. H. ANGELL, J. SECRIST, JOHN ROCHE, MALCOM C. POWRIE, CECIL C. HUMPHREYS, A. F. SCHEIMERHORN, WILLIAM BRANIGAN, JOHN DOE WOLFE, DON C. SWANSON, CARL B. SHERMAN, EARL K. ADAMS, HOWARD H. DAVIS, ROBERT T. PUGH, EDWARD A. FURBUSH, O. WILSON FARRELL, DENNIS G. SMITH, HERBERT J. NUBISH, ROBERT O'KEEFE, EARL P. STATEN, ROBERT MONTGOMERY, NEWELL WILLIAMS, RICHARD DOE DEVINE, RICHARD DOE BULLFRASS, JOHN C. NORRIS, WALT BUTLER, MIKE CASSIDY, PAUL J. O'FARRELL, JOHN W. SCHALLER, LOUIS D. WINE, MERLE ARMSTRONG, JOHN PHILIP MANTON and FRANCIS JOHN GOOD,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

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Rotary Colorprint, 55 Eleventh Street, San Francisco

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States in and for the Southern District of California, Central Division

No. 2850—Y Civ

ARTHUR L. BELL, Individually, and as an Associate of and Division Superintendent of "MANKIND UNITED", a Voluntary Association, for and in behalf of said "MANKIND UNITED" and The Associates thereof; MAUDE ASKEW, EUGENE WADSWORTH BROWN, J. FRED BURKEY, LAWRENCE COOK, A. RAY ELSEA, JACOB GLOECKLER, BAY BURNS SHARP, SHANNA JAKEMAN, PAULINE KELSO, MAX THEODORE MILLER and HOMER G. WILCOX,

Plaintiffs.

vs.

R. B. HOOD, THEODORE CUISE, PHILIP BOWSER, GEORGE M. LANGDON, WILLIAM GIESON, EUGENE GREER, J. H. ANGELL, J. SECRIST, JOHN ROCHE, MALCOM C. POWRIE, CECIL C. HUMPHREYS, A. F. SCHEIMERHORN, WILLIAM BRANIGAN, JOHN DOE WOLFE, DON C. SWANSON, CARL B. SHERMAN, EARL K. ADAMS, HOWARD H. DAVIS, ROBERT T. PUGH, EDWARD A. FURBUSH, O. WILSON FARRELL, DENNIS G. SMITH, HERBERT J. NUBISH, ROBERT O'KEEFE, EARL P. STATEN, ROB-

ERT MONTGOMERY, NEWELL WILLIAMS, RICHARD DOE DEVINE, RICHARD DOE BULLFRASS, JOHN C. NORRIS, WALT BUTLER, MIKE CASSIDY, PAUL J. O'FARRELL, JOHN W. SCHALLER, LOUIS D. WINE, MERLE ARMSTRONG, JOHN PHILIP MANTON, FRANCIS JOHN GOOD, ONE DOE, TWO DOE, THREE DOE, FOUR DOE, FIVE DOE, SIX DOE, SEVEN DOE, EIGHT DOE, NINE DOE and TEN DOE,

Defendants.

COMPLAINT FOR DAMAGES FOR FALSE IMPRISONMENT AND UNLWAFUL SEARCH AND SEIZURE

Come now the plaintiffs and complain against the defendants and each of them and allege:

I.

Jurisdiction of this Court is founded upon a Federal question arising under the Fourth and Fifth Amendments to the Constitution of the United States; and Title 5, U. S. Code: Sections 300 and 300a, as [2] more fully appears hereinafter. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00). Jurisdiction of this Court is founded upon the Federal question involving the rights of the individual plaintiffs and each of them to be free from deprivation of liberty without due process of law by false and unlawful imprisonment; and the Constitutional rights of all of the plaintiffs to be free

from unreasonable searches and seizures. All of the persons who participated in the acts to be hereinafter complained of, with the exception of the defendant Merle Armstrong, were at the time of the commission of said acts, and at all times herein have been, officers of the Federal Government, to-wit, Special Agents of the Federal Bureau of Investigation, U. S. Department of Justice, and claim to have acted under and by virtue of the Provisions of Sections 300 and 300a of Title 5, U. S. Code aforesaid, and have acted in concert as is more particularly set forth hereinafter.

II.

All the individual plaintiffs aforesaid are, and at all times herein have been, citizens of the United States.

III.

The plaintiff, Arthur L. Bell, is and for over eight years has been a resident of the City and County of San Francisco, in the State of California, and has at all times herein been the Division Superintendent for the Pacific Coast Division of "Mankind United"; that the plaintiff, the California Association of "Mankind United" is, and for the last eight years has been, a voluntary association consisting of a varying number of persons, and consists now in the State of California of many thousands of persons, all of whom are citizens of the United States and residents of the State of California, and in whose behalf, as well as in the behalf of the individual plaintiffs herein, this suit is brought.

IV.

That said "Mankind United", a voluntary association, was organized and exists for the following purposes, to-wit: to eliminate [3] illiteracy, poverty and war; to establish world-wide economic equality, based on the principles promulgated by Christ Jesus, including particularly the Golden Rule of Brotherly Love, "one" world family, irrespective of race, color, nationality, religion, education or profession.

V.

That at all times herein, and for a period of 8 years, the plaintiff Arthur L. Bell has been the Division Superintendent for the State of California of said "Mankind United"; and the duties of said plaintiff as such Division Superintendent have been and are as follows: The supervision and coordination of the efforts of all co-workers of the Pacific Coast Division of "Mankind United", in the promulgation of its teachings and the formation of part of a world-wide audience of 200,000,000 persons to whom a thirty day program of "proofs" of the practicability thereof might be safely and systematically released.

That said plaintiff Arthur L. Bell files this suit herein both for himself individually and as an associate and as Division Superintendent of said "Mankind United" for and in behalf of himself as said associate and Division Superintendent, and for and in behalf of all of the associates of said "Mankind United"; the persons constituting said voluntary association being so numerous as to make it

impracticable to bring them all before the Court as parties plaintiff herein, and the appearance of the plaintiff, Arthur L. Bell, herein in their behalf, and the representation by the plaintiff Arthur L. Bell, of said class will insure the adequate representation of all of said associates, and the character of the rights sought to be enforced in behalf of said class is joint and/or common as will appear more particularly hereinafter.

In addition all of the plaintiffs herein assert a right to relief both jointly and severally in respect to, and arising out of, the same transaction, occurrence or series of transactions or occurrences, and questions both of law and of fact common to all of the plaintiffs; with respect to all of the defendants joined in the within [4] action, the plaintiffs assert against them both jointly and severally a right to relief in respect to, and arising out of, the same transaction, occurrence or series of transactions or occurrences; and questions of law and of fact common to all of the defendants will arise in said action.

VI.

That plaintiff, Maude Askew, resides in the City of San Diego, State of California, and has resided therein for more than four years last past, and that she is a co-worker of "Mankind United";

That plaintiff, Eugene Wadsworth Brown, resides in the City of Los Angeles, State of California, and has resided therein for more than four years last-past, and that he is a co-worker and a Bureau Manager of "Mankind United";

That plaintiff, J. Fred Burkey, resides in the City of Oakland, State of California, and has resided therein for more than four years last past, and that he is a co-worker and a Bureau Manager of "Mankind United";

That plaintiff, Lawrence Cook, resides in the City of San Diego, State of California, and has resided therein for more than four years last past, and that he is a co-worker of "Mankind United";

That plaintiff, A. Ray Elsea, resides in the City of Los Angeles, State of California, and that he is a co-worker and a Bureau Manager of "Mankind United";

That plaintiff Jacob Gloeckler resides in the City of Denair, State of California, and has resided therein for more than four years last past, and that he is co-worker of "Mankind United";

That plaintiff Bay Burns Sharp resides in the City of Fresno, State of California, and has resided therein for more than four years last past, and that he is a co-worker and a Bureau Manager of "Mankind United";

That plaintiff Shanna Jakeman resides in the City of Los Angeles, State of California, and has resided therein for more than four years last past, and that she is a co-worker of "Mankind United";

[5]

That plaintiff Pauline Kelso resides in the City of San Diego, State of California, and has resided therein for more than four years last past, and that she is a co-worker of "Mankind United";

That plaintiff Max Theodore Miller resides in the City of Mountain View, State of California, and has

resided therein for more than four years last past, and that he is a co-worker and a Bureau Manager of "Mankind United";

That plaintiff Homer G. Wilcox resides in the City of San Diego, State of California, and has resided therein for more than four years last past, and that he is co-worker and a Bureau Manager of "Mankind United";

VII.

That, with the exception of defendant Merle Armstrong who is on the Police Force in the City of Los Angeles, the defendants, and each of them, were on or about the 18th day of December, 1942, and at all times herein have been, Special Agents of the Federal Bureau of Investigation of the United States Department of Justice, and, on information and belief, their headquarters are as follows: Los Angeles, San Francisco, Oakland and San Diego, California.

VIII.

On the 17th day of December, 1942, the individual plaintiffs herein were indicted by the Grand Jury for the Southern District of California, charged with a violation of Section 34, Title 50, U. S. Code, as appears more particularly in the indictment on file with the Clerk of the above-entitled Court, No. 15759.

IX.

That on or about the 17th day of December, 1942, defendant R. B. Hood and each of the other defendants, unlawfully conspired with each other to act beyond their authority as said Federal Bureau of Investigation agents and police officer respectively,

and agreed that they would abridge the Constitutional rights of the plaintiffs as guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States to be free from the deprivation of liberty and property [6] without due process of law, and to be free from unreasonable searches and seizures, and agreed unlawfully to simultaneously, in the early morning of December 18th, 1942, search the homes of the individual plaintiffs herein without any warrants of search or seizure, and unlawfully to seize the papers, documents and effects of said plaintiffs and of "Mankind United", and falsely to imprison the individual plaintiffs by unlawfully arresting some of the individual plaintiffs without a warrant of arrest and unreasonably to delay the taking of all of the individual plaintiffs before a committing officer, in order to effectuate the unlawful searches and seizures aforesaid.

X.

That thereafter, and on the 18th day of December, 1942, as will appear more particularly hereinafter, the defendants and each of them, in order to carry out the terms and conditions of the illegal conspiracy aforesaid, and solely for the purpose of carrying out said terms and conditions, did arrest and imprison the individual plaintiffs herein, and did search the homes of said plaintiffs, and seize and carry away books, papers and effects of said individual plaintiffs and of said "Mankind United".

XI.

That in accordance with the terms of said conspiracy and in the furtherance of the same and for

the purpose of carrying out its terms and conditions, the said defendants committed the following acts, all of which were and are beyond the scope of the authority of said defendants and in violation of the Constitutional rights of the plaintiffs as guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States, to the damage to the plaintiffs as follows:

(a) That at about 7:30 o'clock in the morning of the 18th day of December, 1942, said defendants, Theodore Cruise, Philip Bowser, George M. Langdon, William Gieson, Eugene Greer, One Doe and Two Doe, did break open the doors of the residence of plaintiff Arthur L. Bell and enter upon his premises and announced to said plaintiff that he was under arrest. That they did not produce an order or warrant of [7] arrest or search and seizure, nor did they have either a warrant of arrest or search warrant, and said defendants proceeded without the consent and against the will of said Arthur L. Bell to search the entire premises in which he lives. That after searching the entire premises and leaving the same in great confusion and disorder, said defendants took this plaintiff from the premises but did not bring him before any committing officer until the hour of two o'clock in the afternoon although holding him in custody during all of said time at his residence; and they did take from his premises thousands of documents, papers, records and other property belonging to "Mankind United" and entrusted to the keeping of this plaintiff, as well as many private documents, papers and other personal properties belonging to this plaintiff and his wife;

also the sum of approximately Eight Thousand Five Hundred ($8,500.00) Dollars in funds of said "Mankind United".

That the property taken from said premises, in addition to the money in question, included personal documents, automobile insurance policies, private papers of this plaintiff's wife, records and documents for two safe-deposit boxes, thousands of receipts for monies expended, letter files and thousands of other papers and documents.

That said defendants, Theodore Cruise, Philip Bowser, George M. Langdon, William Gieson, Eugene Greer, Doe One and Doe Two, remained upon the premises from approximately 8:00 o'clock in the morning to 2:00 o'clock in the afternoon, and removed from this plaintiff's premises twelve large cartons and packages containing "Mankind United" property entrusted to this plaintiff by said "Mankind United" and necessary for the past and present records of the same; the complete contents of said cartons and packages this plaintiff was not informed of at that time, nor since, by said defendants, nor was plaintiff permitted by said defendants to take a list of the same other than the number of cartons removed from the premises.

That during the time when he was falsely imprisoned by the defendants in his premises as aforesaid plaintiff, Arthur L. Bell, was not permitted to see his attorney although said attorney was waiting in the hall outside the door, and did so wait for over five hours, [8] said attorney having been refused permission by these defendants to enter said home of the plaintiff; nor was plaintiff allowed to have

any counsel although questioned by the said defendants for the purpose of obtaining evidence against him in connection with the indictment above set forth, nor was plaintiff allowed to speak with, or obtain advice from, any other person, nor to use his telephone, in all to his damage as herein set forth.

(b) That at about the hour of 7:30 in the morning of the 18th day of December, 1942, said defendants Carl B. Sherman and Earl K. Adams entered the premises of plaintiff Maude Askew, and announced that she was under arrest and stated that they were agents of the Federal Bureau of Investigation; they did not show her a warrant of search and seizure, but falsely imprisoned her upon said premises and stated to her that they did not need a warrant for search and seizure so long as they were making an arrest, and declared that they would assume responsibility for searching said premises and, against the will and without the consent of said plaintiff, did search and take from said premises a large number of documents, papers and other property belonging to "Mankind United" and entrusted to the keeping of this plaintiff, Maude Askew, as well as many private documents, papers and other personal property belonging to this plaintiff, and said defendants did not take her before a committing magistrate, but did take her to the city jail in the City of San Diego, State of California, and there kept her imprisoned until noon Saturday, without arraignment before any committing magistrate whatsoever, in all to her damage as herein set forth.

(c) That at about the hour of 7:30 in the morn-

ing of the 18th day of December, 1942, defendants Edward A. Furbush and Three Doe and Four Doe did enter upon the premises of plaintiff Eugene Wadsworth Brown, showing to him cards of identification as agents of the Federal Bureau of Investigation and stating that this plaintiff was under arrest, producing what they called a "bench warrant" under a secret indictment and showing same to this plaintiff. That said defendants did not [9] produce any warrant of search or seizure, and stated that they had no such warrant, that such a warrant was not necessary as long as they had a warrant for plaintiff's arrest. That said defendants proceeded against the protest and will of this plaintiff, to search the premises in which he lives. That said defendants then proceeded to seize and take away papers and documents, together with one or more moving picture films, the property of "Mankind United" and entrusted to this plaintiff. That upon their entering the premises of said plaintiff Eugene Wadsworth Brown, defendants kept the said Brown as their prisoner in said premises, did not permit him to leave and illegally detained him for the space of approximately 7½ hours, during which time, and until 3:00 or 3:30 P.M. of said day, they neglected and refused to take this plaintiff before a committing officer in accordance with law, and illegally held him as a prisoner and searched his entire premises without permitting him to be present, except for a very short time. When said plaintiff was taken by said defendants to the county jail he was not brought before a committing officer until 4:00 p.m.

That during all of the time that said plaintiff was in the county jail he was held incommunicado by said defendants or their agents, not allowed to telephone anyone or to see a lawyer. That said defendants ransacked the entire home of this plaintiff. That they not only took articles in full view, but opened and searched drawers, shelves and forced one or more locked drawers. That after this plaintiff was taken to the county jail, the defendants remained on his premises without right or warrant and, on information and belief, continued to make an extensive search thereof, in all to his damage as hereinafter set forth.

(d) That at about the hour of 7:30 in the morning of the 18th day of December, 1942, defendants Cecil C. Humphreys, A. F. Scheimerhorn and William Branigan, entered the premises of plaintiff J. Fred Burkey, and announced that he, the said Burkey, was under arrest. That said defendants did not exhibit any warrant of arrest, or any warrant for search or seizure of this plaintiff's premises. That against the protests of this plaintiff and without his consent, they proceeded to [10] search the premises in which he lives and took therefrom a large quantity of documents, records and papers belonging to "Mankind United" and entrusted to this plaintiff. That said defendants refused to permit said plaintiff, J. Fred Burkey, to leave his home, and illegally imprisoned him in said premises without taking him before a committing officer for arraignment; that for the space of more than five hours said defendants detained this plaintiff in said premises while

they searched every room of the same and took therefrom a large number of pamphlets, records and other documents, some belonging to "Mankind United" and legally in this plaintiff's custody, and others belonging to him personally, in all to his damage as hereafter set forth.

(e) That at about the hour of 7:30 in the morning of the 18th day of December, 1942, defendants, O. Wilson Farrell, Dennis G. Smith and Herbert J. Nubish, forced their way into plaintiff Lawrence Cook's home, and announced that he was under arrest, producing a document which they claimed was a warrant of arrest. That said defendants did not produce any warrant for search or seizure. That instead of removing said plaintiff from the premises and arraigning him before a committing officer, against the consent and will of this plaintiff, said defendants searched the entire premises in which he lives, seizing and carrying away great numbers of books, papers and other articles belonging to "Mankind United" entrusted to this plaintiff's care by said "Mankind United", also a great many documents, papers and other personal property belonging to this plaintiff, and forcibly detained said plaintiff, *and forcibly detained said plaintiff* upon said premises after he had been placed under arrest for approximately six hours, in all to his damage as hereinafter set forth.

(f) That at about the hour of 7:30 in the morning of the 18th day of December, 1942, defendants, J. H. Angell, J. Secrist, John Roche and Malcolm C. Powrie, special agents of the Federal Bureau of

Investigation, and Merle Armstrong, a member of the Los Angeles Police Force, did with force and arms enter the premises of plaintiff A. Ray Elsea, and produced what was purported to be a copy of a warrant of arrest, [11] the exact statements therein are unknown to this plaintiff who was not permitted to have a copy of same. That against this plaintiff's will, and without his consent, said defendants proceeded to search the home in which this plaintiff lives with his wife, and to seize all of his books and papers indiscriminately helping themselves to papers, documents and effects belonging to this plaintiff as well as those entrusted to him by "Mankind United", and carried large bundles away from said premises. Included with the papers taken were all of this plaintiff's wife's records concerning a completion of income tax and sales tax returns which it was necessary for her to immediately prepare and file. That said defendants falsely imprisoned this plaintiff in his home from the hour of approximately 7:00 A.M. until approximately 2:00 P.M. That, instead of removing said plaintiff from the premises and arraigning him before a committing officer, said defendants forcibly detained this plaintiff upon said premises after he had been placed under arrest for approximately seven hours, in all to his damage as hereinafter set forth.

(g) That at about the hour of 7:30 in the morning of the 18th day of December, 1942, defendants, John C. Norris, Walt Butler, Mike Cassidy and Paul J. O'Farrell, did enter upon the

premises of plaintiff, Jacob Gloeckler, showed this plaintiff cards of identification as agents of the Federal Bureau of Investigation, forced their way into this plaintiff's house and announced that said plaintiff was under arrest. They did not produce any warrant of arrest, nor did they produce any warrant of search and seizure. That said defendants proceeded, against the consent and will of this plaintiff, to search the premises in which he lived. That said defendants also informed this plaintiff and his wife that they knew their rights, that it was not necessary for them to have either a warrant of arrest or a warrant of search and seizure, and that they were acting under instructions. That after searching the entire premises these defendants seized this plaintiff and took him from the premises together with a great number of documents, papers and records of "Mankind United" entrusted to this [12] plaintiff's care, also a great number of documents and personal property belonging to said plaintiff and his wife. That these defendants forced, under threat, this plaintiff and his wife to fill out a questionnaire in their own handwriting and sign the same, and under threat said defendants dictated the answer this plaintiff and his wife were to make to said questionnaire; that said defendants took said questionnaire away with them. That for approximately four and one-half hours this plaintiff was illegally imprisoned by said defendants upon his premises without being taken before a committing officer, in all to his damage as hereinafter set forth.

(h) That at about the hour of 7:30 in the morning of the 18th day of December, 1942, defendant, Howard H. Davis did enter upon the premises of plaintiff, Bay Burns Sharp, announced that this plaintiff was under arrest and showed him what was purported to be a warrant of arrest, but did not present to this plaintiff any warrant of search and seizure. That said defendant took this plaintiff to the United States Marshal's office in the Federal Building, Fresno, California. That this plaintiff took with him a brief case and had in his pockets records concerning his position with the "Mankind United" Organization and which had been entrusted to him by "Mankind United"; that both the brief case and the papers in plaintiff's pockets were taken from him at the United States Marshal's office. That among the property taken from this plaintiff's pockets and withheld were account books of great value to this plaintiff, but of no value to anyone else, and a name file which contained a complete list of names and addresses of persons affiliated with his work. That this plaintiff has been informed and believes, that without any further exhibition of warrant of search and seizure, after plaintiff's removal to prison, at least seven agents of the Federal Bureau of Investigation, including some of the defendants herein, searched his entire premises, took a great number of documents, papers, records and other personal property therefrom, in all to his damage as hereinafter set forth.

(i) That at about the hour of 7:30 in the morning of the 18th [13] day of December, 1942, defendants, Robert T. Pugh and others, forced an entrance upon the premises of plaintiff Shanna Jakeman. That this plaintiff was in bed, being quite ill. That said defendants pushed their way inside and told plaintiff that they had come to arrest her, stating that they were Federal Bureau of Investigation agents. That said defendants did not produce a warrant of arrest, nor a search and seizure warrant, but proceeded to search plaintiff's home. That after this plaintiff had dressed herself to go with them, said defendants required plaintiff to remain in the living room. That while in her home said defendants presented to this plaintiff a paper and told her that if she did not sign same, they would get a warrant and it would be hard on her. That, under duress, this plaintiff signed said paper. That said defendants remained in this plaintiff's home for about five hours searching same behind closed doors, after searching the living room where plaintiff was compelled to *sat y*. That during all of said period of time this plaintiff was falsely imprisoned by said defendants and detained in her home without being taken before a committing officer. That said defendants seized and took away papers and documents belonging to this plaintiff including her private letters and other personal property; that among the articles taken by said defendants were charts, pictures and other matter being personal property in connection with plain-

tiff's study of "Mankind United". That after thoroughly searching the entire premises, said defendants took this plaintiff to an office on Spring Street, where they asked her a great many questions. That this plaintiff was kept in the Spring Street office for approximately one and one-half hours, at which time she became so faint and ill from lack of nourishment that she could no longer answer questions, and said defendants took her to the county jail in the City of Los Angeles without having been first arraigned before any committing officer, in all to her damage as hereinafter set forth.

(j) That at about the hour of 7:30 in the morning of the 18th day of December, 1942, defendants John Doe Wolfe and Don C. Swanson, did enter the premises of plaintiff Pauline Kelso, announced that [14] that plaintiff was under arrest. That they, John Doe Wolfe and Don C. Swanson, against the consent and will of said plaintiff, proceeded to search the premises in which this plaintiff lives. That, although plaintiff protested against such search and seizure, said defendants produced no warrant for search and seizure. That having falsely imprisoned her in said premises from 7:30 in the morning until in the afternoon, they took this plaintiff, together with the papers, documents and effects which they had seized, to the San Diego County jail where she was confined without being taken before a committing officer until noon Saturday, in all to her damage as hereinafter set forth.

(k) That at about the hour of 7:30 o'clock in the morning of the 18th day of December, 1942,

defendants, John W. Schaller, Louis D. Wine, Four Doe and Five Doe, did, with a revolver force their entrance into the premises of plaintiff Max Theodore Miller, and announced that this plaintiff was under arrest. That said defendants did not produce any warrant of arrest, nor did they produce any warrant of search and seizure. That said defendants proceeded, without the consent and against the will of this plaintiff, to search the premises on which he lives. That upon the United States Postman delivering a registered letter addressed to this plaintiff, said defendants seized the same, opened it and removed the contents. That said defendants seized and carried away from this plaintiff's premises a great number of documents belonging to "Mankind United" and entrusted to the care of said plaintiff; said defendants also took away documents and other personal property belonging to this plaintiff and his wife, including the sum of One Thousand Two Hundred One and 85/100 ($1,201.85) Dollars. That the property taken from said premises by said defendants included, in addition to the money in question, a strong box, together with personal documents, private papers of this plaintiff's wife and all other documents and records which said defendants found in the strong box, including automobile insurance policies. That said defendants searched the private purse of plaintiff's wife, removing and seizing therefrom receipts, including a money order receipt, also a booklet entitled, [15] "The Law and Gospel of Eco-

nomies". That said defendants remained upon this plaintiff's premises from approximately 7:30 A.M. until 12:30 P.M., during all of which time this plaintiff was illegally held a prisoner by said defendants without being taken before a committing officer for arraignment, in all to the damage of said plaintiff as hereinafter set forth.

(1) That at about the hour of 7:30 in the morning of the 18th day of December, 1942, defendants, Robert O'Keefe, Earl P. Staten, Robert Montgomery, Newell Williams and Adam Wolf, did force their way into the premises of plaintiff Homer G. Wilcox, showed this plaintiff cards of identification as agents of the Federal Bureau of Investigation, and announced that plaintiff was under arrest. That they produced a warrant of arrest and stated that that permitted them to search anything they wanted to on plaintiff's premises. That said defendants, against the consent and will of this plaintiff, searched his home. That said defendants seized and took away papers and documents, together with moving picture films, stereopticon slides, maps, etc. That after such search and seizure these defendants seized this plaintiff and took him, together with all the papers, documents seized, from the premises. That during all the time said defendants were carrying on their search and seizure of plaintiff's premises and property, this plaintiff was illegally held a prisoner in his home without being taken before a committing officer for arrignment, in all to his damage as hereinafter set forth.

XII.

That the plaintiffs, and all of them, have been for many years residents of the State of California, and were teachers and ministers preaching the gospel of "Mankind United". That they were handling the business affairs of said "Mankind United" in their respective territories. That they have no other home or occupation other than as such ministers and teachers within the State of California and that there was no reason or probability or likelihood of any of them leaving the State of California, which facts were well known to [16] the defendants who had secretly made careful investigations in connection with all of the actions and doings of said plaintiffs for a long period of time last past; but that said arrests that were herein made without warrants of arrest were made pursuant to the conspiracy aforesaid of said defendants.

XIII.

That in no instance aforesaid did the defendants, or any of them, have a search warrant to search the premises of any of the plaintiffs, nor had such a search warrant been issued.

XIV.

In each instance aforesaid where an arrest was made without a warrant of arrest, the defendants had no reasonable or any ground to believe that the plaintiff so arrested was guilty of a felony cognizable under the laws of the United States, nor had a violation of Title 50, Sec. 34, taken place; nor, as aforesaid, was there any likelihood that

any of the individual plaintiffs would escape before a warrant could be obtained for his arrest; nor, as aforesaid, were any of the individual plaintiffs taken immediately before a committing officer.

XV.

That as the result of said actions of the defendants, the plaintiffs have suffered the following damages:

(1) Plaintiff, "Mankind United" by the disruption of its business has suffered damages in the sum of One Hundred Thousand ($100,000.00) Dollars.

(2) Plaintiff, Arthur L. Bell, individually, by reason of the search of his home and the seizure of his books, papers and effects, has suffered damages in the sum of Five Thousand ($5,000.00) Dollars; that by reason of his false imprisonment this plaintiff has suffered damages in the sum of *Fifth* Thousand ($50,000.00) Dollars; and by reason of the deprivation of his Constitutional rights, mental pain and anguish and suffering, injury to his reputation, said plaintiff has suffered damages in the sum of One Hundred Thousand ($100,000.00) Dollars; in all to his damage One Hundred Fifty-five Thousand ($155,000.00) Dollars.

(3) Plaintiff, Maude Askew, by reason of the breaking into [17] and entering of her premises by the defendants aforesaid, has suffered damages in the sum of Five Thousand ($5,000.00) Dollars; that by reason of her false imprisonment, this plaintiff has suffered damages in the sum of Twenty Thou-

sand ($20,000.00) Dollars; and by reason of the deprivation of her Constitutional rights, mental pain, anguish, suffering and injury to her reputation, plaintiff has suffered damages in the sum of Fifty Thousand ($50,000.00) Dollars; in all to her damage Seventy-Five Thousand ($75,000.00) Dollars.

(4) Plaintiff, Eugene Wadsworth Brown, by reason of the breaking into and entering of his premises by the defendants aforesaid, has suffered damages in the sum of Five Thousand ($5,000.00) Dollars; that by reason of his false imprisonment, this plaintiff has suffered damages in the sum of ($20,000.00) Dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of Fifty Thousand ($50,000.00) Dollars; in all to his damage Seventy-five Thousand ($75,000.00) Dollars.

(5) Plaintiff, J. Fred Burkey, by reason of the breaking into and entering of his premises by the defendants aforesaid, has suffered damages in the sum of Five Thousand ($5,000.00) Dollars; that by reason of his false imprisonment this plaintiff has suffered damages in the sum of Twenty Thousand ($20,000.00) Dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of Fifty Thousand ($50,000.00) Dollars; in all to his damage Seventy-five Thousand ($75,000.00) Dollars.

(6) Plaintiff, Lawrence Cook by reason of the

breaking into and entering of his premises by the defendants aforesaid has suffered damages in the sum of Five Thousand ($5,000.00) Dollars; that by reason of his false imprisonment, this plaintiff has suffered damages in the sum of Twenty Thousand ($20,000.00) Dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the [18] sum of Fifty Thousand ($50,000.00) Dollars; in all to his damage Seventy-five Thousand ($75,000.00) Dollars.

(7) Plaintiff, A. Ray Elsea, by reason of the breaking into and entering of his premises by the defendants aforesaid, has suffered damages in the sum of Five Thousand ($5,000.00) Dollars; that by reason of his false imprisonment, this plaintiff has suffered damages in the sum of Twenty Thousand ($20,000.00) Dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of Fifty Thousand ($50,000.00) Dollars; in all to his damage Seventy-five Thousand ($75,000.00) Dollars.

(8) Plaintiff, Jacob Gloeckler, by reason of the breaking into and entering of his premises by the defendants aforesaid, has suffered damages in the sum of Five Thousand ($5,000.00) Dollars; that by reason of his false imprisonment, this plaintiff has suffered damages in the sum of Twenty Thousand ($20,000.00) Dollars; and by reason of the deprivation of his Constitutional rights, mental pain, an-

guish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of Fifty Thousand ($50,000.00) Dollars; in all to his damage Seventy-five Thousand ($75,000.00) Dollars.

(9) Plaintiff, Bay Burns Sharp, by reason of the breaking into and entering of his premises by the defendants aforesaid, has suffered damages in the sum of Five Thousand ($5,000.00) Dollars; that by reason of his false imprisonement plaintiff has suffered damages in the sum of Twenty Thousand ($20,000.00) Dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of Fifty Thousand ($50,000.00) Dollars; in all to his damage Seventy-five Thousand ($75,000.00) Dollars.

(10) Plaintiff, Shanna Jakeman, by reason of the breaking into and entering of her premises by the defendants aforesaid, has suffered damages in the sum of Five Thousand ($5,000.00) Dollars; that by reason of her false imprisonment, this plaintiff has suffered damages [19] in the sum of Twenty Thousand ($20,000.00) Dollars; and by reason of the deprivation of her Constitutional rights, mental pain, anguish, suffering and injury to her reputation, plaintiff has suffered damages in the sum of Fifty Thousand ($50,000.00) Dollars; in all to her damage Seventy-five Thousand ($75,000.00) Dollars.

(11) Plaintiff, Pauline Kelso, by reason of the breaking into and entering of her premises by the defendants aforesaid, has suffered damages in the sum of Five Thousand ($5,000.00) Dollars; that by

reason of her false imprisonment, this plaintiff has suffered damages in the sum of Twenty Thousand ($20,000.00) Dollars; and by reason of the deprivation of her Constitutional rights, mental pain, anguish, suffering and injury to her reputation, plaintiff has suffered damages in the sum of Fifty Thousand ($50,000.00) Dollars; in all to her damage Seventy-five Thousand ($75,000.00) Dollars.

(12) Plaintiff, Max Theodore Miller, by reason of the breaking into and entering of his premises by the defendants aforesaid, has suffered damages in the sum of Five Thousand ($5,000.00) Dollars; that by reason of his false imprisonment, this plaintiff has suffered damages in the sum of Twenty Thousand ($20,000.00) Dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of Fifty Thousand ($50,000.00) Dollars; in all to his damage Seventy-five Thousand ($75,000.00) Dollars.

(13) Plaintiff, Homer G. Wilcox, by reason of the breaking into and entering of his premises by the defendants aforesaid, has suffered damages in the sum of Five Thousand ($5,000.00) Dollars; that by reason of his false imprisonment, this plaintiff has suffered damages in the sum of Twenty Thousand ($20,000.00) Dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of Fifty Thousand ($50,000.00) Dollars; in all to his damage Seventy-five Thousand ($75,000.00) Dollars.

Wherefore, plaintiffs pray for judgment against the defendants [20] and each of them as follows:

1. Arthur L. Bell, in behalf of "Mankind United": One Hundred Thousand ($100,000.00) Dollars;

2. Arthur L. Bell, individually: One Hundred Fifty-five Thousand ($155,000.00) Dollars;

3. Maude Askew: Seventy-five Thousand ($75,000.00) Dollars;

4. Eugene Wadsworth Brown: Seventy-five Thousand ($75,000.00) Dollars;

5. J. Fred Burkey: Seventy-five Thousand ($75,000.00) Dollars;

6. Lawrence Cook: Seventy-five Thousand ($75,000.00) Dollars;

7. A. Ray Elsea: Seventy-five Thousand ($75,000.00) Dollars;

8. Jacob Gloeckler: Seventy-five Thousand ($75,000.00) Dollars;

9. Bay Burns Sharp: Seventy-five Thousand ($75,000.00) Dollars;

10. Shanna Jakeman: Seventy-five Thousand ($75,000.00) Dollars;

11. Pauline Kelso: Seventy-five Thousand ($75,000.00) Dollars;

12. Max Theodore Miller: Seventy-five Thousand ($75,000.00) Dollars;

13. Homer G. Wilcox: Seventy-five Thousand ($75,000.00) Dollars;

Wherefore, plaintiffs further pray for such other and further relief as to the court may seem just and proper; and for their costs and disbursements.

LORRIN ANDREWS
A. L. WIRIN
By A. L. WIRIN
Attorneys for Plaintiffs [21]

State of California,
County of Los Angeles,—ss.

A. Ray Elsea, being by me first duly sworn, deposes and says: that he is one of the plaintiffs in the above entitled action; that he has read the foregoing Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

A. RAY ELSEA

Subscribed and sworn to before me this 7th day of April, 1943.

[Seal] EDMUND L. SMITH,
Clerk U. S. District Court,
Southern District of California.
By JOHN A. CHILDRESS,
Deputy.

[Endorsed]: Filed April 7, 1943. [22]

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS

To: The Plaintiffs Above Named, Arthur L. Bell, Maude Askew, Eugene Wadsworth Brown, J. Fred Burkey, Lawrence Cook, A. Ray Elsea, Jacob Gloeckler, *Ray* Burns Sharp, Shanna Jakeman, Pauline Kelso, Max Theodore Miller and Homer G. Wilcox: and

To: Their Attorneys, Lorrin Andrews, Esquire and A. L. Wirin, Esquire:

You, And Each of You, Are Hereby Notified that the defendant, Theodore Cruise, by the United States Attorney for the Southern District of California, Charles H. Carr, and Wm. W. Worthington and Mildred L. Kluckhohn, Assistant United States Attorneys for said District, will on the 19th day of July 1943, in the Courtroom of the Honorable Leon R. Yankwich, in the Federal Building, Los Angeles, California, at the hour of 10:00 A.M. thereof, or as soon thereafter as counsel can be heard, move this Honorable Court to dismiss the foregoing action and the complaint for damages for false imprisonment and unlawful search and seizure.

Said motion will be based upon this notice, upon

the records and files in the above entitled action, and the Points and Authorities hereto attached.

Dated June 8, 1943. [23]

CHARLES H. CARR,
United States Attorney
WM. W. WORTHINGTON,
Assistant U. S. Attorney,
MILDRED L. KLUCKHOHN,
Assistant U. S. Attorney,
Attorneys for Defendant,
Theodore Cruise.

[Endorsed]: Filed June 8, 1943. [24]

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes Now the defendant, Theodore Cruise, named a party defendant in the above entitled action by and through his attorney, Charles H. Carr, United States Attorney for the Southern District of California, and moves the Court to dismiss the above entitled action and Complaint For Damages For False Imprisonment and Unlawful Search and Seizure filed therein by reason of the fact that the Court lacks jurisdiction over the person of the defendant; the complaint fails to state a claim against the defendant upon which relief can be granted.

and for such other and further relief as the Court may deem just and proper.

Dated June 8, 1943.

CHARLES H. CARR,
United States Attorney
WM. W. WORTHINGTON
Assistant U. S. Attorney
MILDRED L. KLUCKHOHN,
Assistant U. S. Attorney
Attorneys for Defendant,
Theodore Cruise

[Endorsed]: Filed June 8, 1943. [25]

[Title of District Court and Cause.]

AMENDED MOTION TO DISMISS

Comes Now the defendant Theodore Cruise, named a party defendant in the above entitled action, by and through his attorney Charles H. Carr, United States Atorney for the Southern District of California, and moves the Court to dismiss the above entitled action and Complaint For Damages For False Imprisonment And Unlawful Search And Seizure, filed therein by reason of the fact that the complaint fails to state a claim against the defendant upon which relief can be granted, and for

such other and further relief as the Court mey deem just and proper.

Dated August 20, 1943.

CHARLES H. CARR
United States Attorney
MILDRED L. KLUCKHOHN
Asst. United States Attorney
Attorneys for Defendant,
Theodore Cruise. [26]

[Title of District Court and Cause.]

AFFIDAVIT OF R. B. HOOD

State of California
County of Los Angeles—ss.

R. B. Hood, being first duly sworn, deposes and says:

That he is the Special Agent in Charge, Federal Bureau of Investigation, United States Department of Justice, at Los Angeles, California;

That some months prior to December 17, 1942, an extensive investigation had been conducted throughout the State of California by Agents of the Federal Bureau of Investigation, into the activities of plaintiffs herein, in connection with the possible commission of seditious acts; that on December 17, 1942, a secret indictment, No. 15759, was returned by the Federal Grand Jury for the Southern District of California, before the Honorable Paul J. McCormick, Judge of the United States District Court, Los Angeles, California, charging plaintiffs herein with conspiracy to commit sedition, a felony under Section 34, Title 50, United States Code;

that at such time a motion was made [27] that warrants of arrest be directed to be executed either by the United States Marshal or Agents of the Federal Bureau of Investigation, and that pursuant thereto these warrants were ordered to be so executed; that said warrants of arrest were issued by the Clerk of the United States District Court, Southern District of California, on the afternoon of December 17, 1942, and a non est return was made by the United States Marshal at Los Angeles, California, as to all persons residing outside of the Southern Judicial District of California, except as to A. Ray Elsea;

That when the said secret indictment was returned and orders made, and at the same time of the issuance of the warrants of arrest for plaintiffs herein, Special Agents of the Federal Bureau of Investigation Patrick D. Horgan and Edward A. Furbush (the latter being a defendant herein), were present at all times and the warrants of arrest for those persons residing in the Southern Judicial District of California were handed to them for service after their issuance on the afternoon of December 17, 1942;

That affiant, on the afternoon of December 17, 1942, was advised by the United States Attorney of the return of the warrants of arrest for plaintiffs herein, and directed the apprehension thereof, particularly authorizing the arrest of those plaintiffs residing out of this Judicial District, as fugitives; that for these persons a warrant was then outstanding; that thereupon, affiant authorized the dispatch of information by teletype to the San

Francisco Office of the said Bureau, at 7:12 p.m., of the return of the secret indictment and issuance of the warrants and delivery thereof to the Special Agent at Los Angeles, and the execution of a bond as set by the Grand Jury, all on the said 17th day of December, 1942; that said teletype was sent on said date;

That the arrests, searches and seizures set forth in plaintiffs' complaint were not made until the 18th day of December, 1942.

R. B. HOOD [28]

Subscribed and Sworn to before me this 27 day of August, 1943.

[Seal] A. M. BECKER

Notary Public in and for the County of Los Angeles, State of California

My Commission Expires May 24, 1944.

[Endorsed]: Filed Aug. 28, 1943. [29]

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS

To: The Plaintiffs Above Named, Arthur L. Bell, Maude Askew, Eugene Wadsworth Brown, J. Fred Burkey, Lawrence Cook, A. Ray Elsea, Jacob Gloeckler, *Ray* Burns Sharp, Shanna Jakeman, Pauline Kelso, Max Theodore Miller and Homer G. Wilcox; and

To: Their Attorneys, Lorrin Andrews, Esquire, and A. L. Wirin, Esquire:

You, and Each of You, Are Hereby Notified that the defendants R. B. Hood, John Roche, Robert T.

Pugh, Edward A. Furbush, Earl E. Staten, and Howard H. Davis, by the United States Attorney for the Southern District of California, Charles H. Carr, and Mildred L. Kluckhohn, Assistant United States Attorney for said District, will on the 14th day of September, 1943, in the Courtroom of the Honorable Ralph E. Jenney, in the Federal Building, Los Angeles, California, at the hour of 10:00 a.m. thereof, or as soon thereafter as counsel can be heard, move this Honorable Court to dismiss the foregoing action and the Complaint For Damages For False Imprisonment And Unlawful Search And Seizure. [30]

Said motion will be based upon this Notice, Affidavit of R. B. Hood, upon the records and files in the above entitled action, and the Points and Authorities hereto attached.

Dated August 20, 1943.

CHARLES H. CARR
United States Attorney
MILDRED L. KLUCKHOHN
Asst. United States Attorney
Attorneys for Defendants

[Endorsed]: Filed Aug. 28, 1943. [31]

[Title of District Court and Cause.]

AFFIDAVIT OF R. B. HOOD

State of California
County of Los Angeles—ss.

R. B. Hood, being first duly sworn, deposes and says:

That he is the Special Agent in Charge, Federal Bureau of Investigation, United States Department of Justice, at Los Angeles, California;

That some months prior to December 17, 1942, an extensive investigation had been conducted throughout the State of California by Agents of the Federal Bureau of Investigation, into the activities of plaintiffs herein, in connection with the possible commission of seditious acts; that on December 17, 1942, a secret indictment, No. 15759, was returned by the Federal Grand Jury for the Southern District of California, before the Honorable Paul J. McCormick, Judge of the United States District Court, Los Angeles, California, charging plaintiffs herein with conspiracy to commit sedition, a felony under Section 34, Title 50, United States Code; that at such time a motion [32] was made that warrants of arrest be directed to be executed either by the United States Marshal or Agents of the Federal Bureau of Investigation, and that pursuant thereto these warrants were ordered to be so executed; that said warrants of arrest were issued by the Clerk of the United Stats District Court, Southern District of California, on the afternoon of December 17, 1942, and a non est return was made by the United States Marshal at Los Angeles, California, as to all persons residing outside of the Southern Judicial District of California, except as to A. Ray Elsea;

That when the said secret indictment was returned and orders made, and at the time of the issuance of the warrants of arrest for plaintiffs

herein, Special Agents of the Federal Bureau of Investigation Patrick D. Horgan and Edward A. Furbush (the latter being a defendant herein), were present at all times and the warrants of arrest for those persons residing in the Southern Judicial District of California were handed to them for service after their issuance on the afternoon of December 17, 1942;

That affiant, on the afternoon of December 17, 1942, was advised by the United States Attorney of the return of the warrants of arrest for plaintiffs herein, and directed the apprehension thereof, particularly authorizing the arrest of those plaintiffs residing out of this Judicial District, as fugitives; that for these persons a warrant was then outstanding; that thereupon, affiant authorized the dispatch of information by teletype to the San Francisco Office of the said Bureau, at 7:12 p.m., of the return of the secret indictment and issuance of the warrants and delivery thereof to the Special Agent at Los Angeles, and the execution of a bond as set by the Grand Jury, all on the said 17th day of December, 1942; that said teletype was sent on said date;

That the arrests, searches and seizures set forth

in plaintiffs' complaint were not made until the 18th day of December, 1942

R. B. HOOD. [33]

Subscribed and sworn to before me this 27th day of August, 1943.

[Seal] A. M. BECKER

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires May 24, 1944.

[Endorsed]: Filed Aug. 28, 1943. [34]

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION TO DISMISS

To: The Plaintiffs Above Named, Arthur L. Bell, Maude Askew, Eugene Wadsworth Brown, J. Fred Burkey, Lawrence Cook, A. Ray Elsea, Jacob Gloeckler, *Ray* Burns Sharp, Shanna Jakeman, Pauline Kelso, Max Theodore Miller and Homer G. Wilcox; and

To: Their Attorneys, Lorrin Andrews, Esquire, and A. L. Wirin, Esquire:

Sirs:

Please Take Notice that the defendants Robert M. Montgomery, Carl B. Sherman, and Dennis G. Smith will move this Honorable Court before the Honorable Ralph E. Jenney, Judge of the United States District Court, U. S. Post Office and Court House, Los Angeles (12), California, on the 29th

day of November, 1943, at the hour of 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, to dismiss the above-entitled complaint filed herein by reason of the fact that said complaint fails to state a claim against the defendants upon which relief can be granted, and for such other and further relief as [35] the Court may deem just and proper.

That said Motion is based upon the affidavit of R. B. Hood heretofore filed herein in support of a Motion to Dismiss said complaint made by the defendants R. B. Hood, John Roche, Robert T. Pugh, Edward A. Fugbush, Earl P. Staten, and Howard H. Davis, and Points and Authorities likewise filed in support of last said Motion, which said Motion has been set for hearing on said 29th day of November, 1943. Said defendants beg leave to have said affidavit and said points and authorities considered as the affidavit and points and authorities in support of this said Motion.

Dated: November 16, 1943.

CHARLES H. CARR
United States Attorney
JAMES L. CRAWFORD
WM. W. WORTHINGTON
Assistant U. S. Attorneys
By WM. W. WORTHINGTON
Attorneys for Certain Defendants.

[Endorsed]: Filed Nov. 18, 1943. [36]

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

To: The Plaintiffs Above Named, Arthur L. Bell, Maude Askew, Eugene Wadsworth Brown, J. Fred Burkey, Lawrence Cook, A. Ray Elsea, Jacob Gloeckler, *Ray* Burns Sharp, Shanna Jakeman, Pauline Kelso, Max Theodore Miller and Homer G. Wilcox; and

To: Their Attorneys, Lorrin Andrews, Esquire, and A. L. Wirin, Esquire:

Sirs:

Please Take Notice that on the pleadings heretofore filed herein and the records in this case, a Motion will be made before the Honorable Ralph E. Jenney, Judge of the United States District Court, U. S. Post Office and Court House, Los Angeles (12), California, on the 29th day of November, 1943, at the hour of 10:00 o'clock in the forenoon thereof, or as soon thereafter as counsel can be heard [37] for a Summary Judgment in favor of the defendants R. B. Hood, John Roche, Robert T. Pugh, Edward A. Furbush, Earl P. Staten, Howard H. Davis, Robert M. Montgomery, Carl B. Sherman, and Dennis G. Smith, pursuant to Rule 56 of the Federal Rules of Civil Procedure on the ground that there is no genuine issue as to any matter of fact in the above-entitled complaint, and that said defendants are entitled to judgment against the plaintiffs as a matter of law, and for

such other, further and different relief as may be proper.

That said Motion is based upon the Affidavit of R. B. Hood heretofore filed herein in support of a Motion to Dismiss said complaint made by the Defendants R. B. Hood, John Roche, Robert T. Pubh, Edward A. Furbush, Earl P. Staten, and Howard H. Davis, and Points and Authorities likewise filed in support of last said Motion, which said Motion has been set for hearing on said 29th day of November, 1943. Said defendants beg leave to have said affidavit and said points and authorities considered as the affidavit and points and authorities in support of this said motion.

Dated November 16, 1943.

CHARLES H. CARR
United States Attorney
JAMES L. CRAWFORD
WM. W. WORTHINGTON
Assistant U. S. Attorneys
By WM. W. WORTHINGTON
Attorneys for Certain Defendants.

[Endorsed]: Filed Nov. 18, 1943. [38]

[Title of District Court and Cause.]

AFFIDAVIT OF GEORGE M. LANGDON

State of California,
City and County of San Francisco.—ss.

George M. Langdon being first duly sworn, deposes and says:

That he is one of the persons named as a defendant in the above-entitled action, and is, and was at all times hereinafter mentioned in this affidavit, a Special Agent of the Federal Bureau of Investigation of the United States Department of Justice assigned to the San Francisco office of the said Bureau;

That in the late afternoon of December 17, 1942, your affiant and other Special Agents of the Federal Bureau of Investigation were advised at San Francisco, California, by teletype received from the Los Angeles office of the Federal Bureau of Investigation that an indictment had been returned before the District Court of the United States for the Southern District of California, Central Division, in cause number 15759, charging Arthur L. Bell and other defendants with conspiracy to violate the Espionage Act of 1917, and that a warrant for the arrest of Arthur L. Bell had issued on said indictment and had [39] been returned non est by the United States Marshal for the Southern District of California;

That at 7:30 A. M. on December 18, 1942, your affiant, accompanied by the following Special Agents of the Federal Bureau of Investigation: Philip G. Bowser, Theodore S. Cruise, William F. Giesen and Eugene P. Greer, appeared at the Cathedral Apartments, 1201 California Street, San Francisco, California, for the purpose of apprehending Arthur L. Bell, one of the defendants named in the aforesaid indictment, who resided at apartment number 1502 of the said Cathedral

Apartments, and to effect a search of the said apartment incidental to the arrest;

That upon our arrival at the said Cathedral Apartments Special Agent William F. Giesen stationed himself at the offset on the 11th floor of the apartment building in order that he might observe any attempt by the defendant Bell to effect an escape on the fire-escape which came directly out of the defendant Bell's kitchen window to the 11th floor; that upon our arrival at the aforesaid apartments Special Agent Eugene P. Greer stationed himself in the lobby entrance of the said apartment building in order to pick up the said defendant Bell should he gain access to the elevator and gain exit from the apartment;

That at 7:40 A. M. your affiant and Special Agents Philip G. Bowser and Cruise appeared before the door of apartment number 1502 and knocked at the door loudly and rang the door-bell; that a lady, whom your affiant later ascertained to be Mrs. Bell, came to the door but did not open it and inquired as to the identity of the individuals knocking and was advised by Special Agent Theodore S. Cruise that they were Federal Officers, that a warrant for the arrest of Mr. Bell had been issued and was outstanding and requested that she advise Mr. Bell to admit the agents; that Mrs. Bell then made a general inquiry as to the grounds for the arrest and was advised by Special Agent Cruise that an indictment had been returned by the Federal Grand Jury at Los Angeles charging Mr. Bell with

conspiracy to violate the Espionage Act, after which Mrs. Bell said "Wait a minute"; that at all [40] times during this conversation the door to said apartment 1502 was locked; that your affiant and the agents with him waited for a period of six minutes during which time nothing happened and thereafter they knocked at the door and rang the bell loudly and no response from the occupants was received; that finally Mrs. Bell came to the door of the apartment again, and without opening the same, stated that she would see if Mr. Bell was in; that your affiant then told Mrs. Bell he knew full well that Bell was in and that if she did not open the door the agents would have the unpleasant duty of forcing an entrance; the door was not opened;

That Special Agent Bowser went down to the switch-board of the main lobby at 7:57 A. M. for the purpose of having the operator ring Bell's apartment several times; that your affiant could clearly hear the telephone bell ring in Mr. Bell's apartment but he heard no response thereto; that Special Agents Bowser and Greer returned to join your affiant and Agent Cruise before the doors entering the apartment at 1502 and once more Special Agent Cruise rang the bell and knocked but received no response; that Special Agent Cruise then in a very clear voice called out to Bell and to his wife and advised them they were given one more chance to open the door and admit the agents and that upon their failure to do so, the agents would assume Mr. Bell was resisting arrest by Federal officers and that pursuant to their duties as Special Agents and to

cause his arrest, it would be necessary for the agents to force an entrance; that neither Bell nor his wife answered said call, although your affiant and the agents with him could hear Mr. Bell and his wife conversing in the apartment; that following their refusal to open the door, and feeling that any further delay on the part of Bell and his wife to open the apartment door would enable them to destroy records which might be of value as evidence in the case of Arthur L. Bell and others, your affiant and the accompanying agents gained entrance to the apartment through the kitchen door by forcing a small service door in the lower panel of the kitchen door which opened into the hall several feet from the main [41] door entering the apartment; that Special Agents Cruise and Bowser admitted themselves through this opening and then opened the kitchen door and thereby admitted your affiant, while Special Agent Greer remained in the hall to watch the main entrance into the apartment; that your affiant and Agents Cruise and Bowser, upon entering the kitchen door, found that they had access to the dining-room and living-room but that the door leading into a hall was locked and that it was necessary to open this door before they could have access to the part of the house from which came the voices of Mr. Bell and his wife; that your affiant found it necessary to take the hinges off this door in order to admit them into the hall, which led to a bed-room and den from which the voices emanated; that immediately thereafter Agent Giesen

joined your affiant and the other agents in the apartment;

That your affiant and the other agents then knocked on the door of the bed-room and den which was the room from which the voices of Mr. Bell and his wife were emanating and advised them that they should open this door immediately otherwise your affiant and the agents would have the unpleasant task of having to force an entrance into the bed-room and den; that Mr. Bell then for the first time addressed your affiant and the other agents and advised them that he was dressing and that the agents would have to wait; that your affiant then stated to Mr. Bell that if he did not open the door in a period of exactly three minutes, it would be necessary to force an entrance through the door;

That at the end of exactly three minutes your affiant advised Bell that his time was up and that he should open the door; that the door was not opened, and after an interval of several minutes your affiant and the other agents exerted bodily force upon the door, whereupon Mr. Bell opened the door and immediately began a loud protest against the agents entering his apartment in the manner above-outlined; that Mr. Bell quoted the Constitution and Bill of Rights and demanded that he be shown a search warrant and a warrant for his arrest; that he was then advised by your affiant that a warrant for [42] his arrest had issued in Los Angeles for conspiracy to violate the Espionage Act of 1917 and that a search warrant was not necessary

since the agents were there for the purpose of arresting Mr. Bell and making such search as was necessary and incidental to his arrest;

That immediately thereafter your affiant and the other Special Agents of the Federal Bureau of Investigation presented their credentials and badges to Mr. Bell and again advised him that they were Federal officers and Special Agents of the Federal Bureau of Investigation and that he, Bell, was under arrest; that the time at which the defendant Bell was advised that he was under arrest was 8:10 A.M. of said day; that immediately following the arrest of Bell he was requested, together with his wife, to come into the living-room, at which time Mr. Bell was thoroughly searched by your affiant and Special Agent Bowser; that at that time Mr. Bell was fully clothed even to the extent of a necktie; that no effort was made at this time or at any other time to search the person of Mrs. Bell and she was asked to seat herself on the divan in the living-room and to make herself as comfortable as possible;

That your affiant and the accompanying agents observed that the door to a small den leading from the bed-room was locked and it was apparent to them that the search would consume a considerable period of time; that thereafter your affiant asked Mr. Bell and Mrs. Bell whether they desired to have their breakfast brought up to them or whether they desired coffee, orange juice, or any other item; that both Mr. and Mrs. Bell at this time declined to have food or refreshments of any kind; that follow-

ing the search of the person of Mr. Bell, Special Agents Giesen and Bowser remained in the living-room with Mr. and Mrs. Bell and your affiant and Special Agents Cruise and Greer then commenced a search of the apartment; that with the commencement of the search it was ascertained that the closet located in the hall near the main entrance to the apartment, and the closet opposite the door of the den, and the door of the den, were locked; that affiant asked Mr. Bell to furnish the keys for these [43] doors and advised him it would be necessary for the agents to force an entrance through the doors if he refused to open them voluntarily; that Mr. Bell refused to furnish any keys, stating that affiant and the agents were operating outside the law and used illegal methods and that they had no right to search anything without a search warrant that specifically designated the articles desired;

That following Mr. Bell's refusal to open the doors or advise where the keys were, your affiant and the other Special Agents located many keys which were tried upon the locked doors; that one of the keys did open the door to the den but no key was found which would open the two closet doors, making it necessary for your affiant and the agents to remove the two closet doors from their hinges and place the same in an orderly manner across the wall; that during this time Mr. Bell went over and sat on the divan near his wife, held her hand and stated to her in the presence of your affiant and the other agents that the agents were very nice and very gentlemanly in their conduct, to which Mrs.

Bell replied that "indeed they were" and that she and her husband had certainly been accorded very courteous treatment by all the agents and that she surely appreciated their thoughtfulness and understanding;

That your affiant and the agents in opening the door to the den found it in wild disorder and contained several locked cabinets in addition to numerous bundles, bags and boxes strewn around the floor, on the chairs and in cabinets; that before your affiant and the agents started the examination and search of this room and the inspection of the papers therein contained, Special Agent Cruise took five pictures of the said den and its then contents; that after your affiant and the other agents began an examination of the papers and objects contained in the said den, Mr. Bell began to assist the agents in opening various lockers and cabinet drawers and that while he would not tell them which keys would fit, he did "fool around with the keys" and gave them a *clew* as to which ones would open the respective lock; that he did not open them himself;

[44]

That Mr. Bell, after the agents had been looking over the cartons in which many of the papers and documents were contained and which your affiant observed were papers of the Mankind United, asked the agents if he could not assist them in order to expedite the handling of the voluminous material in the apartment and asked them whether or not such assistance on his part would constitute a consent to the action of the agents; that affiant advised

Mr. Bell that his assistance in that regard would not alter his legal status in any way;

That while the search was going on Mrs. Bell prepared a breakfast for Mr. Bell and herself, which was consumed by them; that Mr. Bell during the search took his coat off, rolled up his sleeves and aided in the packing of the Mankind literature, papers, records and documents in cartons, which he produced; that while the papers and documents and other articles were being packed, Mr. Bell took an inventory of the same, as did also Agents Greer and Giesen; that while the search was being conducted and the documents of Mankind United were being packed, Mr. Bell engaged the agents in conversation in which he expressed the hope that his ideas on sedition and those of the agents were the same and that there would not be too much publicity in connection with his arrest, indicating to the agents that more than a million of his followers throughout the state would, through their blind loyalty and fidelity to the cause, take misguided action;

That once access had been gained to all the doors, closets and drawers of the apartment, it was evident to the affiant and to the other agents that it would be impossible to go through the voluminous records and literature of Mankind United contained in the said apartment, and properly identify, mark and pack the same, and Special Agent Cruise thereupon telephoned the office of the Federal Bureau of Investigation and requested that other agents be sent to assist in the marking and packing of the material seized in the search; that upon completion

of the search of the premises the doors which had been removed were rehung and the apartment placed in *an* orderly a condition [45] as possible; that while the search was being conducted and at 12:10 P. M. Special Agent Cruise left the apartment for the purpose of proceeding to the office of the United States Commissioner in the Post Office Building at San Francisco, California, to there file a complaint for the removal of the defendant Bell to Los Angeles; that at approximately 1:30 P. M. your affiant and the other Special Agents who accompanied him to the apartment, with the exception of Special Agent Cruise, left the apartment of Mr. Bell for the purpose of booking him at the City Prison of the Police Department of the City and County of San Francisco en route to the United States Marshal; that while leaving the apartment of the defendant Bell and in the corridor, your affiant and the other Special Agents encountered one Charles R. Garry, who stated that he was the attorney for Mr. Bell, and affiant advised Mr. Garry, upon inquiry from him, that he would be able to locate Mr. Bell at the City Prison;

That thereafter your affiant and the agents accompanying him took Mr. Bell to the garage of the apartment house where he was placed in a car of the Federal Bureau of Investigation and taken from the said apartment to the City Jail of the City and County of San Francisco, where at 1:50 P. M. he was booked by Officer Albert Lundy, Star No. 858, en route to the United States Marshal; that prior to the departure of the affiant and Spe-

cial Agents Bowser and Giesen from the City Jail, where they had booked Mr. Bell, Mr. Bell extended his hand and advised them that he wanted to shake hands with the agents and thank them for the courteous treatment that they had accorded him and Mrs. Bell and he stated to them that he hoped when this was all over he could know the agents under more pleasant circumstances; that at no time did your affiant or any other agents of the Federal Bureau of Investigation use any threatening or abusive language of any kind or character toward Mr. Bell or Mrs. Bell;

That at no time did Mr. Bell while in the presence of the agents or in their custody or while being booked at the City Prison request that he be brought before a United States Commissioner or any [46] other magistrate or judge whatsoever;

That during all of the time from 8:10 A. M., when your affiant and the agents placed Mr. Bell under arrest, until they left the apartment of Mr. Bell at approximately 1:30 P. M., your affiant and the Special Agents were engaged in the search of the premises and the marking, listing and packing of the documents, papers and circulars and other articles of Mankind United; that throughout all this time Mr. Bell, at his request, was permitted to assist in the packing of the above-mentioned articles and he took and kept a personal inventory of the same;

That your affiant, and Special Agent Cruise in particular, were familiar with the literature of

Mankind United and the seditious character of the same, and that Special Agent Cruise was one of the witnesses who appeared before the Grand Jury which returned the indictment; that the following day when your affiant and other agents of the Federal Bureau of Investigation were rechecking the documents, papers and literature seized as aforesaid, they found in certain envelopes packed with the records of Mankind United, the sum of $8190.25 in currency of the United States; That at no time did Mr. Bell state or indicate in any manner to your affiant or the agents, that said money or any moneys were contained in or with the documents and envelopes seized by your affiant and the other agents aforesaid.

GEORGE M. LANGDON.

Subscribed and sworn to before me this 29th day of November, 1943.

[Seal] FRANCIS ST. J. FOX,
U. S. Commissioner Northern District of California at S. F.

[Endorsed]: Filed Dec. 4, 1943. [47]

[Title of District Court and Cause.]

AFFIDAVIT OF
AUGUSTUS F. SCHERMERHORN

State of California,
City and County of San Francisco—ss.

Augustus F. Schermerhorn, being first duly sworn, deposes and says:

That he is one of the persons named as a defendant in the above entitled action, and is, and was at all times hereinafter mentioned in this affidavit, a Special Agent of the Federal Bureau of Investigation of the United States Department of Justice assigned to the San Francisco office of the said Bureau.

That in the late afternoon of December 17, 1942, your affiant, together with other Special Agents of the Federal Bureau of Investigation, was advised by a teletype received from the Los Angeles office of the Federal Bureau of Investigation that an indictment had been returned before the District Court of the United States for the Southern District of California, Central Division, charging Arthur L. Bell and J. Fred Burkey and others with conspiracy to violate the Espionage Act of 1917, that a warrant for the arrest of J. Fred Burkey had issued on said indictment, and the same had been returned non est by the United [48] States Marshal for the Southern District of California.

That on the morning of December 18, 1942, at approximately 7:40 o'clock A.M., your affiant and Special Agents William A. Branigan, Cecil C. Humphreys, and Arthur F. Baier were admitted to the premises and residence of J. Fred Burkey, 5523 Laverne Street, Oakland, California; where your affiant and the aforesaid Agents had gone for the purpose of apprehending Mr. Burkey and making such search as was necessary incidental to said arrest; that Mrs. Burkey, the wife of the aforesaid J. Fred Burkey, was present at said time, and although

each Agent produced his credentials, she asked to examine them, and at the time copied the name of each of the Special Agents present; that Mr. Burkey asked to see the warrant of arrest, but was advised by your affiant and the Special Agents that they were acting under emergency powers, that they had no warrant of arrest with them, but that an indictment had been returned in Los Angeles by the Federal Grand Jury, charging him with conspiracy to violate the Sedition Statute, and that a warrant had been issued for Mr. Burkey; that Mr. Burkey did not question the right of the agents to arrest him under the circumstances.

That at approximately 8:00 o'clock A.M., your affiant telephonically notified the San Francisco office of the Federal Bureau of Investigation of the subject's apprehension. That after placing Mr. Burkey under arrest he was advised that a search of his premises would be conducted, to which he protested, saying that your affiant and the Agents did not have the right to do so under the Constitution of the United States; that your affiant and the Special Agents advised Mr. Burkey that the search was being made on the premises immediately under Mr. Burkey's control as an incident to his arrest; that Mr. Burkey then stated to your affiant and the Agents that the search would be conducted over his protest, that they had no right to do so, and that it was necessary for the Agents to have a search warrant issued by a Federal Judge setting forth exactly what was to be found upon the premises; that Mr. Burkey was again told that under the

circumstances of his arrest it was not necessary to have a search warrant. That dur- [49] ing the search, and at the time of the apprehension of Mr. Burkey, your affiant produced a search warrant covering the premises at 5538 Foothill Boulevard, Oakland, California, which is the business establishment of the J. Fred Burkey Ambulance Company, and copies of this search warrant were given to both Mr. and Mrs. Burkey. Mr. Burkey then remarked that this search warrant did not cover his residence, and again stated that the search of his residence would be conducted over his protest.

Mr. and Mrs. Burkey were afforded every courtesy by your affiant and the Agents, and he was told that he would be allowed to get dressed and have breakfast if he wished; that Mr. Burkey declined to dress, but did put on his shoes, socks, and trousers, and he also declined to eat. No restrictions whatever were placed on Mrs. Burkey, and she was permitted the full run of the house and the privilege of answering incoming telephone calls and the doorbell, and doing any other acts she desired. Thereafter the premises were searched, and in the search of the dining room, locked buffet cabinets were willingly opened by Mrs. Burkey. That during the course of the search your affiant located an envelope containing financial statements in connection with the operation of Mankind United, and moneys were attached thereto; that this money was then counted in the presence of Mr. Burkey, and returned to him, together with a copy of each statement to which the money was attached: Mr. Burkey then gave a

signed receipt therefor; that these receipts were then attached to the original Mankind United statements which were seized and removed as evidence.

That Mrs. Burkey was asked if she would execute a questionnaire concerning ankind United; that she declined to do so, but did make certain oral statements to Special Agent Humphreys in answer to a prepared questionnaire form from which the questions were asked; that Mrs. Burkey stated she did not wish to answer all the questions contained in the questionnaire, nor make any statements, without consulting an attorney. That Mr. Burkey was also asked to execute a questionnaire, but he stated that he would not answer the questions contained in the [50] prepared questionnaire until he had discussed the matter with an attorney. That the search of the aforesaid premises was concluded at approximately 12:30 o'clock P.M., at which time Mr. and Mrs. Burkey, at the suggestion of the Agents, had lunch in the kitchen. That after this, Mr. Burkey changed his clothes, and at approximately 1:15 o'clock P.M., the evidence collected at the aforesaid residence was placed in a car of the Federal Bureau of Investigation, and a receipt for the said evidence was signed by Mrs. Burkey, and a copy thereof given to her.

That Mr. Burkey then accompanied the Agents to his place of business at 5538 Foothill Boulevard, Oakland, California, for which a search warrant had previously issued; that Mr. Burkey willingly unlocked the door and permitted the Agents to enter the said premises without protest. A search was

then conducted by Special Agents Baier, Humphreys and Branigan while your affiant took twelve photographs of the inside of the garage, showing two mimeograph machines, folding chairs, wall signs, and volumes of literature.

That at approximately 2:30 P.M., Mr. Burkey was advised by the Agents that he would have to accompany two of them to the Eastern Division of the Oakland Police Department; that he was told by Agent Baier that his wife would be permitted to come over to the Ambulance Company premises and to remain with the Agents until the conclusion of the search; that Mr. Burkey agreed to this, and stated that he would telephone his wife from his place of business; that Mr. Burkey then telephoned his wife and told her to come over and be with the agents while they were conducting the search. That after this telephone call, Mr. Burkey was permitted to shave and wash, and then willingly accompanied your affiant and Special Agent Baier to the Eastern Division Police Station, where he was booked en route to the United States Marshal.

That thereafter your affiant and Special Agent Baier returned to the said business premises of Mr. Burkey, at 5538 Foothill Boulevard, Oakland, California, and continued the search of the premises with [51] Agents Humphreys and Branigan in the presence of Mrs. Burkey.

That at no time did Mr. Burkey request that he be brought before a United States Commissioner, or any other magistrate or judge. That your affiant participated in the investigation of the activities of

Mankind United and is familiar with the literature of said Mankind United, and the seditious character of the same, and that the literature seized in the aforesaid premises was literature of Mankind United and believed by your affiant to be seditious and of evidentiary value in the trial of the indictment returned and pending at Los Angeles, California.

AUGUSTUS F. SCHERMERHORN

Subscribed and sworn to before me this 29th day of November, 1943.

[Seal] FRANCIS ST. J FOX

U. S. Commissioner Northern District of California at San Francisco.

[Endorsed]: Filed Dec. 4, 1943. [52]

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN C. NORRIS

State of California,
City and County of San Francisco—ss.

John C. Norris, being first duly sworn, deposes and says:

That he is one of the persons named as a defendant in the above-entitled action, and is, and was at all times hereinafter mentioned in this affidavit, a Special Agent of the Federal Bureau of Investigation of the United States Department of Justice assigned to the San Francisco office of the said Bureau.

That in the late afternoon of December 17, 1942,

your affiant, together with other Special Agents of the Federal Bureau of Investigation was advised by a teletype received from the Los Angeles office of the Federal Bureau of Investigation that an indictment had been returned before the District Court of the United States for the Southern District of California, Central Division, charging Arthur L. Bell and [53] Jacob G. Gloeckler and others with conspiracy to violate the Espionage Act of 1917, that a warrant for the arrest of Jacob G. Gloeckler had issued on said indictment, and the same had been returned non est by the United States Marshal for the Southern District of California.

That on December 18, 1942, your affiant, together with Special Agents Edward W. Butler, Jr., Paul J. O'Farrell and Michael J. Cassidy of the Federal Bureau of Investigation, proceeded to the home of Jacob G. Gloeckler at Denair, California, for the purpose of apprehending said Jacob G. Gloeckler and making such search of his premises at the time of the arrest as was necessary and incidental to the arrest; that your affiant and the aforesaid Special Agents of the Federal Bureau of Investigation arrived at the premises of said Jacob G. Gloeckler at 8:05 A.M. o'clock, and there knocked upon the door of his home; that in response to the knocking of your affiant and the aforesaid Agents, Jacob G. Gloeckler appeared at the door in his night clothing and a bathrobe; that your affiant and the aforesaid Special Agents then explained to Mr. Gloeckler that it was necessary for them to take him into custody since an indictment had been returned against him

and others by the Federal Grand Jury at Los Angeles, charging a conspiracy to violate the Espionage Act of 1917; that your affiant and Special Agent Michael J. Cassidy entered the home of Mr. Gloeckler and at the time advised him that he should get dressed into warm clothing before being taken from his home. Your affiant and Special Agent Cassidy remained in the front room while Mr. Gloeckler went to an upstairs bedroom, where he said his wife was. That shortly thereafter, Special Agent O'Farrell entered the home of Mr. Gloeckler and was present when Mr. Gloeckler came back into the front room accompanied by his wife, who was wearing a housedress; that Mr. Gloeckler had on his shirt, trousers, and shoes. That thereafter, a brief statement of the background information of Mr. Gloeckler was secured from him while Mr. Gloeckler, at the suggestion of your affiant and the Special Agents accompanying him, was fixing a breakfast; that at approximately 8:15 A.M., Special Agent Edward W. Butler, Jr. entered the front door and [54] Special Agent Michael J. Cassidy left the house for the purpose of telephoning his office and advising of the apprehension of Mr. Gloeckler. At the conclusion of the breakfast, Special Agent Michael Cassidy returned to the aforesaid premises, and thereafter Special Agents Butler and O'Farrell had Mr. and Mrs. Gloeckler execute a questionnaire relative to Mankind United and its activities; that the execution of the questionnaires commenced at approximately 8:50 A.M., and terminated at approximately 10:30 A.M.; that while the agents were at the afore-

said premises and the said questionnaires were being executed, certain persons visited the aforesaid premises and there engaged in conversation with Mr. and Mrs. Gloeckler. That upon the completion of the aforesaid questionnaires at 10:30 A.M., Mr. and Mrs. Gloeckler reread the same, made corrections, and signed the same at approximately 10:40 A.M. That during the execution of the aforesaid questionnaires your affiant and the other Special Agents made a search of the aforesaid premises, and completed the same at approximately 11:35 A.M. That during all this time certain telephone calls came into the home of Mr. Gloeckler and were answered by either Mr. Gloeckler or his wife, and one of the calls, Mr. Gloeckler stated, was from a newspaper reporter who wanted to talk to him and was coming out to the house.

That thereafter, and at approximately 11:45 A.M., your affiant and the other Special Agents left the home of Mr. Gloeckler with Mr. Gloeckler in their custody. Special Agents Michael J. Cassidy and Edward W. Butler, Jr. took Mr. Gloeckler to the Stanislaus County Jail, where he was booked en route to the United States Marshal for the Northern District of California. Your affiant and Special Agent Paul J. O'Farrell did not accompany Mr. Gloeckler and Special Agents Cassidy and Butler on their trip to the jail.

That at no time during the course of the interview and the search of the premises of Mr. Gloeckler, or after his apprehension, did he ask or request that he be brought before a United States Commissioner,

or any other magistrate or judge; that Mr. Gloeckler made no request for counsel, and all requests made by him were granted by [55] your affiant and the aforesaid agents. That your affiant participated in the investigation of the activities of Mankind United and is familiar with the literature of said Mankind United, and the seditious character of the same, and that the literature seized in the aforesaid premises was literature of Mankind United, and believed by your affiant to be seditious and of evidentiary value in the trial of the indictment returned and pending at Los Angeles.

JOHN C. NORRIS

Subscribed and sworn to before me this 29th day of November, 1943.

[Seal] FRANCIS ST. J. FOX

U. S. Commissioner Northern District of California at San Francisco.

[Endorsed]: Filed Dec. 4, 1943. [56]

[Title of District Court and Cause.]

AFFIDAVIT OF LOUIS D. WINE

State of California,

City and County of San Francisco—ss.

Louis D. Wine, being first duly sworn, deposes and says:

That he is one of the persons named as a defendant in the above entitled action, and is, and was at all times hereinafter mentioned in this affidavit,

a Special Agent of the Federal Bureau of Investigation of the United States Department of Justice assigned to the San Francisco office of the said Bureau.

That in the late afternoon of December 17, 1942, your affiant, together with other Special Agents of the Federal Bureau of Investigation was advised by a teletype received from the Los Angeles office of the Federal Bureau of Investigation that an indictment had been returned before the District Court of the United States for the Southern District of California, Central Division, charging Arthur L. Bell and Max Theodore Miller and others with conspiracy to violate the Espionage Act of 1917, that a warrant for the arrest of Max Theodore Miller had issued on said indictment, and the same had been returned non est by [57] the United States Marshal for the Southern District of California.

That on the morning of December 18, 1942, at approximately 7:40 o'clock A.M. thereof, your affiant, accompanied by Special Agents John William Schaller, Frank Good, and John P. Manton, of the Federal Bureau of Investigation, arrived at the home of Max Theodore Miller, at 1264 Latham Street, Mountain View, California, where your affiant and Special Agent Schaller rang the doorbell; that Mrs. Max Theodore Miller came to the door, and your affiant and Special Agent Schaller introduced themselves by displaying their badges and commission cards; that Mrs. Miller called her husband to the door, but your affiant and the Special

Agents accompanying him were refused admission after announcing that they were there for the purpose of apprehending Mr. Miller on a felony indictment returned at Los Angeles charging conspiracy to violate the Espionage Act of 1917; that subject was arrogant and belligerent in his attitude and demeanor toward your affiant and the Special Agents, and your affiant, after advising Special Agent Schaller to watch the front entrance and Special Agents Good and Manton to watch the rear and to keep out of range of the windows because of the possibility that Max Theodore Miller might use force, went to the nearest telephone and telephoned the San Francisco office of the Federal Bureau of Investigation for further instructions; that your affiant was advised that he and the Special Agents accompanying him should again seek entrance to the home, and if necessary, to break the door. That your affiant returned to the home of Mr. Miller, who again came to the door and stated that he would not let affiant and the Agents in; that Mr. Miller refused to open the door, but talked to your affiant and the Special Agents through a bolted screen door; that Mr. Miller was told that if he did not submit to arrest peacefully it would be necessary to break down the door; that Mr. Miller still refused, and your affiant then produced his sidearm and told him that he was under arrest, to put up his hands, and to open the screen door, which Mr. Miller then did; that Mr. Miller was then handcuffed, and one of the aforesaid Agents was then assigned to guard Mr. Miller. [58]

Thereafter, your affiant and the other Special Agents searched the aforesaid premises, and Special Agent Manton took pictures thereof. That following said search, your affiant and the Special Agents of the Federal Bureau of Investigation took and seized certain books, documents, pamphlets, and literature of Mankind United, and $1201.85, money found in a strong box, and constituting funds of "the Organization". The evidence thus obtained was marked for identification, carefully packed, and a receipt was given to Mr. Miller for the $1201.85 after it was counted by your affiant and Special Agent Good in the presence of Mr. Miller. Immediately thereafter, Mr. Miller was taken directly to San Jose, California, and booked at the County Jail en route to the United States Marshal at 12:30 P.M. of said day.

That at no time did Mr. Miller request that he be brought before a United States Commissioner, or other magistrate, or judge. That your affiant participated in the investigation of the activities of Mankind United and is familiar with the literature of said Mankind United, and the seditious character of the same, and that the literature seized in the aforesaid premises was literature of Mankind United, and believed by your affiant to be seditious and of evidentiary value in the trial of

the indictment returned and pending at Los Angeles, California.

LOUIS D. WINE

Subscribed and sworn to before me this 29th day of November, 1943.

[Seal] FRANCIS ST. J. FOX,
U.S. Commissioner Northern District of California at S. F.

[Endorsed]: Filed Dec. 4, 1943. [59]

[Title of District Court and Cause.]

AFFIDAVIT OF CARL B. SHERMAN

United States of America,
Southern District of California—ss.

I, Carl B. Sherman, a Special Agent, Federal Bureau of Investigation, being duly sworn, on oath, hereby depose and say:

On December 18, 1942, at 7:30 a.m., accompanied by Special Agent Earl K. Adams and Peggy Davis, a Matron, I presented myself at 3636 Georgia Street, San Diego, California. I knocked at the door and in answer to the knock a young boy came to the door. I asked him if his mother Mrs. Maude Askew, was at home. He said that she was, and in a moment Mrs. Askew came to the door. At that time I exhibited my credentials, introduced Agent Adams, who exhibited his credentials, and introduced Peggy Davis, the Matron.

I stated to Mrs. Askew that I had a warrant for her arrest. She asked us to come into the living room, which we did, standing just inside the front door. Mrs. Askew asked to see the warrant, took it and read it, taking approximately five minutes to do so. She then said she had done nothing that she was afraid of and that she was ready to go. I told her that I desired to search the premises, and she said I had no right to do so unless I had a search warrant. I explained to [60] her that I had a right to search the premises where she was arrested incident to the warrant of arrest and that no separate warrant of search and seizure was necessary. She then stated that if that were the case I had her permission to search the premises. I told her that I particularly wanted all documents relative to the organization "Mankind United." She took me into the next room, stating that nearly all her papers concerning "Mankind United" were kept therein. I had a list of particular papers which had been handed me by Special Agent Earl Staten, and I asked Mrs. Askew particularly for those papers. She took the various papers that I asked for originally from various notebooks that she removed from a drawer in a cabinet and from a table in the room. Noting numerous other documents all relative to "Mankind United", I told her that I desired to take them all so that they might be examined by the United States Attorney. She agreed to our taking the documents and handed them to me. I gave her a receipt for the documents, although she stated it was not necessary.

During the course of securing the documents from her, Mr. Askew, her husband, voluntarily went into a room and brought forth a document which I recall to be Bulletin No. 1, containing the poem "The Call of War."

After the various documents had been gathered together, Special Agent Adams asked if he might look around the yard, as we had been advised that they had gasoline stored about the premises. Mr. Askew voluntarily showed Agent Adams around and over the yard.

At the time the agents presented themselves at the front door, Mrs. Askew was fully dressed and apparently was just sitting down to breakfast. Following the securing of the various documents, which took approximately 30 minutes, Mrs. Askew sat down with her family and ate breakfast. This took approximately ten minutes. She then asked whether or not she could change her clothes before accompanying the agents to the county jail. She was advised that she could do so. I then went into the living room with Agent Adams and she went into her bedroom, where she dressed in the presence of the Matron, Peggy Davis, and her [61] daughter. She then went into the bathroom alone and Mrs. Davis waited just outside the bathroom door. She took approximately 25 minutes to dress, following which time she was taken to the county jail in San Diego and was booked at 8:55 a.m. on December 18, 1942. The charge was given as violation of Sec. 33, Title 50, U.S.C.—hold for United States Marshal.

During the course of the search her daughter stated to her mother that she hoped I would be able to talk some sense into her mother's head.

On the way from her home to the county jail Mrs. Askew advised that I, Mr. Adams and Peggy Davis had conducted her arrest in a gentlemanly manner and that she had no complaint to make with reference to the way she had been treated. She at no time made any request to be taken before a committing magistrate, and I did not take her before a committing magistrate because she was arrested under a warrant following indictment by the Grand Jury. Immediately upon placing Mrs. Askew in jail, I notified the United States Marshal of her arrest.

CARL B. SHERMAN

Subscribed and sworn to before me this 29th day of November, 1943.

[Seal] EDMUND L. SMITH,
Clerk of the United States District Court for the Southern District of California.
By P. D. HOOSER,
Deputy.

[Endorsed]: Filed Dec. 4, 1943. [62]

[Title of District Court and Cause.]

AFFIDAVIT OF DENNIE G. SMITH (FBI AGENT) IN REPLY TO PETITION OF LAWRENCE H. COOK

United States of America,
Southern District of California—ss.

Dennie G. Smith, being first duly sworn, deposes and says:

That he was at all times herein mentioned a Special Agent of the Federal Bureau of Investigation and during the month of December, 1942, he was then assigned to the San Diego office of the Federal Bureau of Investigation.

That prior to making the arrest of Mr. Cook, he and two other agents of the Federal Bureau of Investigation called at his premises; they knocked upon the door of his premises at about the hour of 7:30 o'clock a.m., December 18, 1942, and first Mrs. Cook came to the door; whereupon, affiant states, we inquired of Mrs. Cook if her husband, Mr. Cook, were home, and she replied that he was there; whereupon I asked Mrs. Cook that she call Mr. Cook to the door. Shortly thereafter, the defendant Cook appeared at the door; whereupon I told him that I had a warrant for his arrest and the warrant was displayed; this warrant is the original warrant now filed in the herein case, and I have inspected said warrant since it has been so filed. This [63] warrant was directed not only to the Marshal, but likewise to the agents of the Federal Bureau of Investigation.

When Mr. Cook appeared at the door, he was

advised that we were Federal Agents, and had come to make his arrest in connection with this case. Whereupon, Mr. Cook opened the screen door, and told us to come in.

We then entered the premises, and Mr. Cook stated that he would go to his room and dress, which he did, and at all times one or the other of us agents stayed in his immediate presence.

After Mr. Cook had dressed, we advised him that as an incident to his arrest, it was our duty to make a search of his premises to see if he had any papers, material, books, or pamphlets, of the nature which I had been advised was referred to in the indictment, and which pertained to seditious activities or to the movement known as Mankind United, and we then proceeded to conduct a search of his premises.

In the living room, the room which we had entered immediately from the street, after going through a small hall, we found certain material, all of which pertained to Mankind United.

According to my best recollection, Mr. Cook was booked at the County Jail at San Diego, California, by myself and other agents, as a prisoner for the United States Marshal, at about the hour of 3 o'clock p.m. on December 18, 1942.

There was some delay in booking Mr. Cook, the reason being as follows, to wit:

In the conferences that we had at the Federal Bureau of Investigation, preceding the arrest of Mr. Cook, we were advised that many of the defendants, or persons operating or affiliated with

the movement known as Mankind United, were storing large quantities of gasoline to further their efforts in carrying out the program of their conspiracy in connection with the principles they were advocating under the movement known as Mankind United.

In searching the premises which Mr. Cook was occupying and those immediately adjacent thereto, which he stated belonged to him, [64] after making a rather thorough search, we uncovered numerous five-gallon cans, containing gasoline. This required considerable digging about the yard of said premises, and in all there were uncovered 244 gallons of gasoline.

That a search of the premises took approximately 4½ hours, during all of which time said Cook was arguing and discussing with the agents concerning their search and method of searching; that at no time from the arrest of said Cook did said Cook suggest, request or demand of affiant or any agent of the Federal Bureau of Investigation that he be immediately or otherwise booked by said affiant or anyone else.

DENNIE G. SMITH,
Affiant.

Subscribed and sworn to before me, this 30 day of November, 1943.

[Seal] HELEN C. POLK,
Notary Public in and for the County of San Diego, State of California.

My Commission Expires Jan. 28, 1945.

[Endorsed]: Filed Dec. 4, 1943. [65]

[Title of District Court and Cause.]

AFFIDAVIT OF H. FRANK ANGELL

United States of America,
Southern District of California—ss.

H. Frank Angell being duly sworn deposes and says that he was at all times hereinafter mentioned, a Special Agent of the Federal Bureau of Investigation, and on the 18th day of December, 1942, was assigned to the Los Angeles Office of the Federal Bureau of Investigation of the U. S. Department of Justice; that at 7:30 A.M. on the 18th day of December, 1942, deponent, together with Special Agents John Roche, Jarrard Secrist and Malcolm G. Powrie, arrived at the premises of A. Ray Elsea located at 1405 Laveta Terrace in the City of Los Angeles, and rang the doorbell of the residence of said Elsea, and in a few moments thereafter said Elsea came to the door dressed in a bathrobe; that deponent's identity and those of the above named Special Agents were immediately made known to the said Elsea and he was advised by said Agents that they possessed a warrant for his arrest.

Your deponent and the Agents thereupon entered the house and showed the warrant to Elsea and advised him that it would be necessary to search his premises, to which he at first objected. It was then pointed out to Elsea that the warrant for his arrest covered such a search and that same would be made. He continued for several minutes [66] thereafter to object to such search and then abandoned his objections. Elsea's residence is made up

of four small rooms, one of which is a bedroom and kitchenette, one room having been made over into what looked like an office containing a steel desk, upon which was a typewriter and miscellaneous books and pamphlets at the time deponent and said agents entered the premises. There was at such time a mimeograph machine in this room. In the cupboard in said room were various items of writing material and mimeographed sheets. In the kitchenette was an electric typewriter and cupboard stacked full of mimeograph sheets and material dealing with Mankind United and books and pamphlets of the same. Your deponent, and the above stated agents, in his presence, examined the contents of the rooms, desk and other furniture in the premises. Among other matters found upon the premises were 24 notebooks containing pencil notes of Elsea concerning matters relative to Mankind United.

Your deponent and the said agents were at no time during the search of said Elsea's residence and/or from the time of their arrival there, as above stated, dilatory in their search of said premises, and did at all such times use the utmost expedition that could be used with a proper search

under such circumstances; that such search was completed at 1:15 P.M. o'clock on the same day.

H. FRANK ANGELL

Subscribed and sworn to before me this 1st day of December, 1943.

[Seal]: EDMUND L. SMITH,
Clerk, U. S. District Court,
Southern District of California.

By JOHN A. CHILDRESS,
Deputy.

[Endorsed]: Filed Dec. 4, 1943. [67]

[Title of District Court and Cause.]

AFFIDAVIT OF RICHARD C. THOMPSON (FBI AGENT) IN REPLY TO PETITION OF EUGENE WADSWORTH BROWN

State of California,
County of Los Angeles—ss.

Richard C. Thompson, being first duly sworn, deposes and says:

That he was at all times herein mentioned, Special Agent of the Federal Bureau of Investigation, and during the month of December, 1942, he was then and there assigned to the Los Angeles offices of said Bureau.

That in this particular case, affiant, at the time of making the arrest of defendant Brown, had with him the original Bench Warrant which has now been filed in the herein matter. That upon approaching the apartment of defendant Brown,

affiant informed defendant Brown that he and several of the parties with him were Federal agents; that he had a warrant for his arrest and had come to make his arrest in connection with this case; whereupon, defendant Brown permitted affiant and the accompanying agents to enter the apartment. That the Bench Warrant was displayed to defendant Brown and was read by him. That after defendant Brown had been informed that he was under arrest, affiant advised him, as a part of said arrest, a search would be made of [68] his apartment, which apartment defendant Brown conceded was his apartment, to see if there was then and there present any seditious literature or material that had been used in conjunction with Mankind United since the entry of the United States into the war, or any material which had been a part of the conspiracy as charged to violate the Espionage Act.

That defendant Brown at no time objected to any search being conducted; his only statement was that he inquired whether such a search was a procedure allowable under the Constitution, and as to whether we, the agents, were justified in making the search. We advised him that we believed we were not only justified, but it was our duty to make the search incident to the arrest. The search was then and there conducted.

That at the time of said arrest, the whole of the apartment appeared to be an office rather than a typical dwelling place, although there was in the living room an in-a-door bed. In said apart-

ment there was located a typewriter, adding machine mimeograph, filing cabinets and various other articles that are frequently associated with office work. Most of the material obtained from said apartment was either in plain view or after having noted material in plain view pertaining to Mankind United, the other material was readily accessible in said apartment. With respect to the lock-box referred to in Brown's petition, after some discussion, the defendant Brown found a key which opened said box. The data therein contained was inspected, but none of it was retained; in the box was a certain amount of currency, in all over $844; this money was placed in the lock box, and this lock box, for the purpose of safekeeping was taken down to the County Jail and deposited with the jailor, together with its contents. Affiant was informed and believes, and therefore alleges that upon defendant Brown's making bail and being released from custody, said lock box and all its contents, including the money, was returned to defendant Brown—at least none of the material therefrom was retained by the agents of the Federal Government. [69]

Affiant verily believes that all the material retained as an incident to said search pertained to Mankind United, and was of the nature of material and documents referred to in the charges of the indictment; that no effort was made to retain any personal or private documents of defendant Brown.

That after the arrest of defendant Brown and

the search as an incident thereto, defendant Brown was taken from said apartment to the County Jail, leaving the apartment in the early afternoon, and was booked at the County Jail at approximately 2 o'clock p.m. on December 18, 1942.

RICHARD C. THOMPSON,
Affiant.

Subscribed and sworn to before me, this 2 day of December, 1943.

[Seal] EDMUND L. SMITH,
Clerk, U. S. District Court.
Southern District of California.
By JOHN A. CHILDRESS,
Deputy.

[Endorsed]: Filed Dec. 4, 1943. [70]

[Title of District Court and Cause.]

AFFIDAVIT OF ROBERT T. PUGH (FBI AGENT) IN REPLY TO PETITION OF MRS. SHANNA JAKEMAN

State of California,
County of Los Angeles—ss.

Robert T. Pugh, being first duly sworn, deposes and says:

That he was at all times herein mentioned a Special Agent of the Federal Bureau of Investigation, and during the month of December, 1942, was then and there assigned to the Los Angeles office of said Bureau.

That affiant, together with two other agents of the Bureau, conducted the arrest of defendant Shanna Jakeman, the same taking place at the hour of 7:30 a.m. on December 18, 1942.

The details pertaining to said arrest are as follows:

Upon calling at the address of 503 South Union Drive, Los Angeles, California, at apartment 307 of said address, one of the agents proceeded to knock upon the door, whereupon after a few moments, defendant Mrs. Jakeman came to the door, and in my presence, agent Garvey told Mrs. Jakeman that we were all Federal officers and had a warrant for her arrest. [71]

We then entered the apartment and told her she would have to make herself ready to be taken into custody. She inquired as to the charges, and it was explained to her that she was charged with conspiracy to commit sedition, and the Bench Warrant was shown to her and she read it.

Mrs. Jakeman then said that she was ill; we then inquired as to the nature of her illness, and she stated that she had a slight cold, but further stated that she had been out of her apartment the day before to go to the store, and that she was not under the care of a doctor; the last time she had seen a doctor was six weeks prior thereto.

Inquiry was then made of her as to whether there was any other person present in the apartment, and she said that her son was there. Whereupon, one of the agents knocked upon an adjoining door and woke the son, who then dressed and came

into the main room of the apartment, where his mother was. The name of the son is Max Wells Jakeman, hereinafter referred to as son. The son then prevailed upon his mother to go into the bathroom and get dressed, which she did, returning shortly thereafter to the main room.

Prior to the arrest in question, I had attended a conference of the Federal Bureau of Investigation, where, among other things, I had been apprised of the nature of the extensive investigation being conducted by the Federal Bureau of Investigation throughout the state of California, of the activities of a seditious nature, of various persons in conjunction with a movement known as Mankind United.

The general nature of the charges had been explained to me, and likewise the general type and character of literature and material being utilized by various co-defendants, in the furtherance of the objects of their conspiracy.

The general nature of the proposed charges that we believed that the grand jury would return had likewise been explained to me, and in making the search and seizure, we agents confined our search to those articles pertaining to charges referred to in the indictment and the charges brought against the various defendants. [72]

It is true we explained to Mrs. Jakeman that if she was willing we would like to have her come to the offices of the Federal Bureau of Investigation for the purpose of an interview. She stated that she had no objection to doing so, and was quite

willing to go to our offices, prior to being lodged in the County Jail. She was taken to our offices, and in a very orderly and courteous manner was interviewed, for a period of about two hours, during all of which interview a feminine stenographer of the Federal Bureau of Investigation was present.

We repeatedly asked Mrs. Jakeman if she cared to partake of food and she stated that she did not, but after concluding the interview at the office at about the hour of 12:30 p.m. of December 18, 1942, Mrs. Jakeman was then taken out of the office for lunch, and directly thereafter in the early afternoon of December 18, 1942, booked at the Los Angeles County Jail as a prisoner for the United States Marshal of this district.

The total time we were at Mrs. Jakeman's apartment was from about 7:30 a.m. until about 11 o'clock a.m.

ROBERT T. PUGH,
Affiant.

Subscribed and sworn to before me this 2d day of December, 1943.

[Seal] EDMUND L. SMITH,
Clerk, U. S. District Court.
Southern District of California.
By JOHN A. CHILDRESS,
Deputy.

[Endorsed]: Filed Dec. 4, 1943. [73]

[Title of District Court and Cause.]

AFFIDAVIT OF ADAM E. WOLF (FBI AGENT) IN REPLY TO PETITION OF PAULINE L. KELSO

State of California,
County of Los Angeles—ss.

Adam E. Wolf, being first duly sworn, deposes and says:

That he was at all times herein mentioned, a Special Agent of the Federal Bureau of Investigation, and during the month of December, 1942, he was assigned to the San Diego office of the Federal Bureau of Investigation.

That affiant, together with Swanson another agent of the Federal Bureau of Investigation and also accompanied by a matron from the San Diego Police Department, participated in the arrest of defendant Kelso in connection with the herein matter. That said arrest took place at about the hour of 7:30 a.m., December 18, 1942, at the residence of said defendant, to wit: 1718, Union Street, San Diego, California.

That prior to making the arrest, affiant attended a conference conducted by Special Agent Earl P. Staten at the office of the Federal Bureau of Investigation in San Diego, at which time and place there were then and there present other agents of said Bureau; that said conference took place a few days prior to the arrest in question; that [74] at the conference affiant was advised that the Federal Bureau of Investigation had conducted

an extensive investigation of certain persons whose names were ultimately included as defendants in the herein indictment.

Affiant was further advised that testimony had been submitted to the Federal grand jury at Los Angeles pertaining to the activity of defendant Kelso, and others, in conjunction with an alleged conspiracy growing out of the activities of a movement known as Mankind United, and that said parties were believed to have violated the Espionage Act of the United States, namely 50 U.S.C.A. Section 33, by reason of a conspiracy existing between said parties.

That at said conference, affiant was advised of the general nature of the charges proposed to be contained in the indictment and of the literature and pamphlets and other articles to be utilized by the proposed subjects in the furtherance of their conspiracy to make seditious utterances.

That it was further explained that arrests were to be made throughout the state of California at various places and as near as possible all of said arrests would be made around 7:30 a.m. on the morning of December 18, 1942, so as to avoid any premature publicity. That affiant had with him the original Bench Warrant issued by the herein court at the time of making the arrest in question.

That upon knocking upon the door of the dwelling occupied by defendant Kelso at about the hour of 7:30 a.m., December 18, 1942, a woman came to the door, and affiant inquired of said

woman as to the whereabouts of defendant Kelso, and the woman replied that Mrs. Kelso was still in bed; whereupon affiant produced his credentials and identified himself as an agent of the Federal Bureau of Investigation and was permitted to enter said premises, accompanied by the matron and the other agent and they were permitted to sit in the living-room of said dwelling house until defendant Kelso could attire herself and come into the room.

That upon defendant Kelso's coming into the room, affiant identi- [75] fied himself as a Federal officer and Agent Swanson displayed to defendant Kelso the original Bench Warrant issued in the herein matter for the arrest of defendant Kelso and advised her she was then and there under arrest. Affiant advised defendant Kelso that she was charged, with certain other persons, of entering into a conspiracy to violate the Espionage Act and that an indictment had been returned, and as a part of his duty he was directed to make a search of her premises to ascertain whether there was any literature or material of the type or character referred to in the charges that had been brought. That defendant Kelso stated no such search should be made, and affiant advised her he was duty bound to make such a search and, together with the accompanying agents, made a search of the premises which were actually under the control of defendant, and after having conducted the search there was then and there secured certain articles and documents pertaining to Mankind United.

That, as heretofore stated, affiant did in fact

actually produce a Bench Warrant for the arrest of defendant Kelso. That the search of said premises was conducted in a courteous and orderly fashion, and it was apparent in examining said rooms that considerable material pertaining to Mankind United was then and there present in the dwelling occupied by the defendant, although only a small portion thereof was actually seized and taken. Affiant verily believes that all the material secured pertained to Mankind United, and it has a correct relation to the accusations contained in the indictment, the details of which had been rather fully explained to your affiant prior to making the arrest in question as a part of his duty as an agent in conjunction with the herein matter.

That on the same morning in question, after making the arrest and search, defendant Kelso was taken to the County Jail in the city of San Diego, by the agents, and booked as a prisoner for the United States Marshal.

ADAM E. WOLF,
Affiant. [76]

Subscribed and sworn to before me, this 3 day of December, 1943.

[Seal] EDMUND L. SMITH,
Clerk, U. S. District Court.
Southern District of California.
By JOHN A. CHILDRESS,
Deputy.

[Endorsed]: Filed Dec. 4, 1943. [77]

[Title of District Court and Cause.]

AFFIDAVIT OF EARL P. STATEN (FBI AGENT), IN OPPOSITION TO PETITION OF HOMER G. WILCOX

State of California,
County of Los Angeles—ss.

Earl P. Staten, being first duly sworn, deposes and says:

That he is and was at all times herein mentioned a Special Agent of the Federal Bureau of Investigation, and assigned to the San Diego office of such Federal agency;

That affiant on the morning of December 18, 1942, together with other officers of the Federal Bureau of Investigation, went to the home of the defendant Wilcox at 1716 Union Street, San Diego, which place is a flat divided into four separate units, and first knocked on the back door of said premises, and after waiting a few moments, the defendant Wilcox appeared at the door, at which time your affiant advised said defendant Wilcox that he was an officer of the Federal Bureau of Investigation, as were the men with him, and that he had with him a warrant for his arrest and that he had come to make the arrest of the defendant Wilcox, and visibly displayed to the defendant Wilcox the Bench Warrant for his arrest, and allowed said Wilcox to take the warrant and read the same, which affiant observed Wilcox so [78] doing.

That defendant Wilcox thereupon stated that he did not wish to have his premises searched, but your affiant advised said defendant that as an in-

cident to the arrest, it was his duty to make a search of his premises to ascertain whether or not there was any literature, pamphlets, documents, books, or other articles of the class referred to in the accusation that had been brought against him, or in the indictment; and told him that he was duty bound to search the premises for articles of a seditious nature or articles that might have been utilized by said defendant in said enterprise.

Whereupon your affiant and the other three agents who accompanied him went into the front room of said flat. A general description of said rooms is as follows: Said rooms are divided merely by a large opening; they have all the appearance of being an office or meeting place; that several of the walls have shelves on which were stacked books, magazines, pamphlets, etc; that there was located in said rooms a mimeograph machine, typewriter, mailing devices, stationery supplies, desks, tables, etc. There was in plain view a large number of pamphlets and literature that affiant through his investigation knew had been utilized in conjunction with the activities of the Mankind United movement; that a search was made of said premises,

That at all times a very orderly attitude was maintained; courtesy was extended to the defendant and the agents working in conjunction with your affiant made a search of the premises merely for articles that were material to the accusations made in the indictment; no effort was made to take any

personal or private papers belonging to said defendant Wilcox, and while your affiant is unable to state just [79] which documents or papers seized at said place were most obviously in plain view, he does affirm that all of said documents were conspicuous and noted in the rooms of the dwelling house in which defendant Wilcox stated he was then and there residing, and in which place affiant, from previous knowledge, knew defendant Wilcox was residing, and also using as his office.

That among said documents were motion picture films, maps and stereoptican slides; that all of said documents and articles to affiant's best knowledge and belief were pertinent to the activities of defendant Wilcox and the co-conspirators in connection with their association with the activity known as Mankind United and of the character of those documents referred to in the indictment.

That a search of the premises took approximately 3½ hours, during all of which time said Wilcox was arguing and discussing with the agents concerning their search and method of searching; that at no time from the arrest of said Wilcox did said Wilcox suggest, request or demand of affiant or any agent of the Federal Bureau of In-

vestigation that he be immediately or otherwise booked by said affiant or anyone else.

EARL P. STATEN,
Affiant.

Subscribed and sworn to before me, this 3 day of December, 1943.

[Seal] EDMUND L. SMITH,
Clerk, U. S. District Court.
Southern District of California.
By JOHN A. CHILDRESS,
Deputy.

[Endorsed]: Filed Dec. 4, 1943. [80]

[Title of District Court and Cause.]

AFFIDAVIT OF HOWARD H. DAVIS (FBI AGENT), IN REPLY TO PETITION OF BAY BURNS SHARP

State of California,
County of Los Angeles—ss.

Howard H. Davis, being first duly sworn, deposes and says:

That he was at all times herein mentioned a Special Agent of the Federal Bureau of Investigation, and during the month of December, 1942, he was then and there assigned to the Los Angeles office of said Federal Bureau of Investigation.

That your affiant, together with an agent of the Federal Bureau of Investigation, and a city detective of the city of Fresno, at about the hour of 8:07 a.m. on December 18, 1942, called at the de-

fendant Sharp's residence, to wit: 1237 "R" Street, Fresno, California, which is a five-room dwelling house.

That at said time and place, affiant had in his possession the original Bench Warrant for the arrest of defendant Sharp, which warrant now reposes in the files of the herein case, and upon the reverse side of which warrant appears a return made by affiant.

That prior to making the arrest, affiant had discussed with several of his co-associates in the Federal Bureau of Investigation, the [81] nature of the investigation being conducted pertaining to the activities of defendant Sharp, and other proposed co-defendants; that affiant had offices in the same room as agent Edward Furbush who had been assigned to work upon this case for a period of approximately 6 or 8 months last past and had frequently discussed with him said case and investigations that were being conducted in Los Angeles, the Fresno area, San Diego and at San Francisco.

That on the morning of December 17, 1942, affiant attended a conference at the offices of the Federal Bureau of Investigation, conducted by the agent in charge, at which time there was then and there present Patrick Horgan, Special Agent of the Federal Bureau of Investigation, and various other agents, and the purpose of said conference was to explain procedure that was to be had in event the grand jury returned an indictment in the herein matter.

That at said conference, among other things, it was explained to affiant by his then superiors, that the program to be followed in connection with the arrest of various defendants who might be indicted by the grand jury, was that they should all be apprehended as nearly as possible in the early morning of December 18, so that no premature publicity would arise, as might be the case in event they were apprehended over an extended period of hours; that at said conference it was further explained that this was an important matter, the charges were serious, and that the proposed defendants were persons who had been working together in a conspiracy to violate the provisions of the espionage act by reason of making seditious utterances and distributing literature, books, letters, and pamphlets under the name of an activity known as Mankind United. That it was then and there explained that as soon as final word had been received of the return of the indictment in the herein case, that warrants would be provided so that the agents could make the arrests in this district of the defendants residing in this district, after having received the warrants.

It was further explained at that conference that after making the arrest, as an incident to the arrest, that it was our duty and it was [82] proper for us to search the premises of each of the defendants for articles, books, letters, and documents then within the immediate possession or control of the premises that each of the defendants were occupying, which were of a seditious nature, or

that pertained to the activities of Mankind United; it being explained that all of such documents and articles pertaining to Mankind United were being utilized by the various proposed co-conspirators and by others in the furtherance of their seditious activities.

The text of the Sedition Statute, namely 50 U.S.C.A. Section 33, was explained to the agents then present at said conference, and the general nature of the charges in the proposed indictment were likewise explained to the agents then and there present.

I was assigned to proceed to Fresno, California, to await further orders, and to await receipt of the Bench Warrants expected in the herein case. I then went to Fresno, and in the evening of December 17, 1942, the original Bench Warrant for the arrest of the defendant Sharp was brought to the Fresno office of the Federal Bureau of Investigation.

I received instructions from the Los Angeles office to make the arrest in the early morning of December 18, as nearly as possible between the hours of 7:30 and 8:00 a.m. On the morning of December 18, as previously planned, I called at the residence of defendant Sharp, knocked at the door and Sharp came to the door, at which time and place I, in substance, advised defendant Sharp that I was a Federal officer and agent of the Federal Bureau of Investigation, and that I had come to make his arrest. I then and there displayed the original Bench Warrant for his arrest.

I then entered the premises with two other officers, at which time and place there was then and there handed to defendant Sharp the original Bench Warrant which he took and read; I then told Sharp he was under arrest and the charges against him were for seditious activities. I advised him to get dressed, and after he had dressed I told him we were directed to make a search of his premises in connection with the charges that had been brought against him, and affiant, to- [83] gether with the other officers, proceeded to make a search of the premises.

Upon entering the rooms of Sharp's dwelling house, it was very evidence that there were considerable pamphlets, material, drawings and charts pertaining to Mankind United, which were in open and plain view. We then proceeded to examine the books, documents, papers and articles then and there present, and after making a careful examination selected certain documents and articles. Defendant Sharp was booked with the Deputy United States Marshal of Fresno, California, in the Federal Building, at about the hour of 9:30 a.m., on December 18, 1942. No effort was made to take any personal papers or property belonging to defendant Sharp excepting those directly referring to seditious matters or to the activities of Mankind United.

That at the time defendant was booked by the United States Marshal, he had with him a brief case which he was carrying, and a search was made of it at the office of the United States Marshal.

and there was then and there taken from it documents, articles and material referring to Mankind United, or its activities, which documents were likewise retained. That said arrest and the search incident thereto was done in an orderly and courteous manner, and that no force was used in connection therewith. Affiant verily believes that all the articles and material taken from Sharp or his premises had a reasonable and direct connection with Sharp and the charges as contained in the indictment.

HOWARD H. DAVIS,
Affiant.

Subscribed and sworn to before me this 3rd day of December, 1943.

[Seal] EDMUND L. SMITH,
Clerk, U. S. District Court,
Southern District of California.
By J. M. HORN,
Deputy.

[Endorsed]: Filed Dec. 4, 1943. [84]

[Title of District Court and Cause.]

COUNTER AFFIDAVIT OF A. RAY ELSEA

A. Ray Elsea, being first duly sworn, deposes and says:

That he resides at 1405 Laveta Terrace, in the City and County of Los Angeles, State of California;

That affiant has read the affidavit of H. Frank

Angell, Special Agent of the Federal Bureau of Investigation, and filed in support of the defense, and states that same is not a complete statement of the actions of said H. Frank Angell and other special agents of the Federal Bureau of Investigation that arrested your affiant on the 18th day of December, 1942;

That a full and complete statement of what occurred at that time is set forth by your affiant in this counter affidavit;

That at about the hour of 7:00 in the morning of the 18th day of December, 1942, defendants H. Frank Angell, J. Secrist, John Roche and Malcolm Powrie, special agents of the Federal Bureau of Investigation, and Merle Armstrong, a member of the Los Angeles Police Force, forced an entrance into the premises of your affiant, and produced what [85] was purported to be a warrant of arrest;

That your affiant asked to see a warrant for search and seizure;

That said agents produced no warrant for search and seizure but told this affiant that the warrant for his arrest gave them the right to search and seize anything they pleased, and that they—the said agents—knew their rights;

That both your affiant and his wife told said agents repeatedly that they knew their rights under the Constitution of the United States, and warned them about breaking the Fourth and Fifth Amendments to said Constitution;

That prior to this proceeding your affiant has never been charged with, or arrested for, any crime

whatsoever, nor did he commit any crime in the presence of said agents;

That affiant is now over 50 years of age; was born in the United States and is an American citizen;

That he is a student of the doctrines of the "Mankind United" organization, and has been so for more than four years;

That said doctrines of "Mankind United", as studied by this affiant, have nothing of a political or sectarian nature, but are wholly philosophical, based upon the teachings of Christ Jesus as set forth in the New Testament of the Bible, and upon the Golden Rule announced by Christ Jesus in His theory of the right way for all persons to live in this world;

That said Federal Bureau of Investigation agents utterly ignored your affiant's demands that they produce a search and seizure warrant and, without the consent and against the will of affiant said agents searched the entire premises of your affiant, leaving same in the utmost disorder;

That your affiant protested frequently but, without his consent and against his will, said agents made a most thorough search, seizing and taking away from said premises many documents, papers and other personal property belonging to this affiant and his wife; [86]

That after completing their search of your affiant's entire premises, said agents took your affiant to the County Jail;

That said agents remained on affiant's premises

from approximately 7:00 A. M. until 2:15 P. M., during all of which time affiant was held in the custody of said persons who had entered his premises, was not permitted any liberty, nor was he permitted to leave said premises or to notify any outside persons of his imprisonment, nor was he ever brought before any committing magistrate, but was imprisoned and first appeared before the Hon. Harry A. Hollzer, a Judge of the above-entitled Court, on or about the 21st day of December, 1942;

That at no time did your affiant consent to the entry of his premises by said agents, nor to the carrying away by said *agents his* personal documents, papers, etc., but that affiant continually protested against the action of said agents in restraining him in his liberty and forcibly searching his premises and taking therefrom the documents as set forth herein.

A. RAY ELSEA

Subscribed and sworn to before me this 20th day of December, 1943.

[Seal] MABEL A. DOANBURG,
Notary Public in and for the County of Los Angeles, State of California.

Received Copy of the Within Counter Affiavit. This 29th day of December, 1943.

CHARLES H. CARR, A
United States Attorney.

[Endorsed]: Filed Dec. 29, 1943. [87]

[Title of District Court and Cause.]

COUNTER AFFIDAVIT OF MARION J. ELSEA

State of California,
County of Los Angeles—ss.

Marion J. Elsea, being first duly sworn, deposes and says:

That she is the wife of A. Ray Elsea, one of the plaintiffs in the above-entitled action;

On the morning of December 18th, 1942, around 6:50 o'clock affiant's doorbell chimed and Mr. Elsea arose and went to the door;

That affiant immediately arose and started to get dressed when steps came close to her bedroom door and affiant stepped behind the door, and as the door was pushed in your affiant pushed it back, at the same time calling out. Affiant's husband said, "Do not go in there, my wife is there"; that the door was again pushed and affiant again pushed it back saying, "stop"; that affiant then grabbed a dressing gown and came out into the living room;

That in the living room of affiant's home, four men later began grabbing papers from your affiant's desk, scattering papers and books [88] everywhere, stuffing them into their pockets and piling them in a heap;

That your affiant said to said agents, "Gentlemen, you have a warrant for my husband's arrest, so you say—but you have shown no search and seizure warrant to either me or my husband, and I believe you had better cease rummaging around

and messing things up, for we know our constitutional rights, and you have no right whatsoever to do this. My husband will go with you, but you will have to stop this unlawful procedure";

That the two agents who were the spokesmen both said that your affiant needn't get up in the air, that they were in affiant's home to search every bit of the house and were going to do it; that they didn't need a warrant;

That your affiant again reiterated that they were breaking the Fourth and Fifth Amendments to the Constitution of the United States;

That this affiant again told said agents that if they were going to search, they would have to have a warrant for search and seizure, stating what they were looking for and in what part of the house they expected to find it;

That during all this time said agents were continuing the search, upsetting the house and everything in it in general;

That in a little back room where your affiant has her office work, one of the agents picked up a Christmas gift from an old friend of affiant's in the East;

That affiant told him he had no right to open the gift or to handle it as it was not addressed to them and it was not yet Christmas and affiant would not open it;

That upon said agent attempting to open said Christmas gift, your affiant grabbed it away from him refusing to allow him to open it;

That said agents took all of your affiant's bookkeeping records and continually asked for things other than what they saw—wanting to know what each thing was, to which your affiant replied that all of said affiant's and her husband's records were plainly marked;

That all of said agents carried guns on their hips.

MRS. MARION J. ELSEA [89]

Subscribed and sworn to before me this 14th day of December, 1943.

[Seal] MABEL A. DOANBURG

Notary Public in and for the County of Los Angeles, State of California.

Received Copy of the Counter Affidavit, This 29th day of December, 1943.

CHARLES H. CARR, A
United States Attorney.

[Endorsed]: Filed Dec. 29, 1943. [90]

[Title of District Court and Cause.]

COUNTER AFFIDAVIT OF MRS. ELIZABETH GLOECKLER

State of California,
County of Stanislaus—ss.

Elizabeth Gloeckler, being duly sworn, deposes and says:

I am the wife of Jacob Gloeckler. Early in the morning of December 18, 1942, in answer to a ring of the door bell Mr. Gloeckler went to the door. Messrs. Mike Cassidy, Walt Butler, John Norris and Paul J. O'Farrell presented credentials that they were Federal Bureau of *Information* agents, and informed Mr. Gloeckler that he was under arrest;

That the said agents did not present any warrant for his arrest, nor any search warrant. They started pulling out drawers and pulled out everything they could find, taking some of our records and literature;

In reply to my inquiry as to whether placing Mr. Gloecker under arrest gave them *to* right to search the house, they said: "Yes, we have arrested him and that gives us the right to search every inch [91] of his premises. We could even pull up the rugs and search, but, if you will cooperate with us, we won't have to do that", or words to that effect;

That said agents remained on the premises for about four hours; that Messrs. Cassidy and O'Farrell came back again that night, but then they were very courteous. They stayed on the porch and asked me if I would invite them in; and I said, "that all depends". They were there on the pretext of getting some clothing for my husband, whom they had taken to jail that afternoon. They asked me for more records and took some more of them; I asked them, "What, actually, have you charged my husband with?" and they said, "The only

charge we have placed against him is that he belongs to a movement known as "Mankind United", which is considered subversive." I told them, "If that's the case, you have a lot of arrests to make." They replied, "No, we don't work that way. We just pick out the leaders."

That during the time said agents were searching our home and before they took Mr. Gloeckler away, they forced under threats both my husband and myself to fill out a questionnaire in our own handwriting and sign the same and, under threat, said agents dictated the answers we were to make to said questionnaire, and said agents took with them the signed questionnaire so dictated by them.

MRS. ELIZABETH GLOECKLER.

Subscribed and sworn to before me this 13 day of December, 1943.

[Seal] H. D. CARLSON,
Justice of the Peace, in and for the County of Stanislaus, State of California.

Received Copy of the Within Counter Affidavit, this 29th day of December, 1943.

CHARLES H. CARR, A
United States Attorney.

[Endorsed]: Filed Dec. 29, 1943. [92]

[Title of District Court and Cause.]

COUNTER AFFIDAVIT OF JACOB GLOECKLER

State of California,
County of Stanislaus—ss.

Jacob Gloeckler, being duly sworn, deposes and says:

That he has read the affidavit of John C. Norris filed in the above-entitled case; that the statements as to the actions of said Norris and other agents of the Federal Bureau of Investigation while on affiant's premises are not true, except as set forth herein;

That affiant is a citizen of the United States, and resides at Denair, Stanislaus County, California;

That prior to the proceedings set forth herein affiant has never been charged with, or arrested for, any crime whatsoever; that he is now over 56 years of age, and earns his living as a farm laborer;

That affiant is a student of the doctrines of the "Mankind United" organization, and has been for more than three years;

That the doctrines of "Mankind United" as studied by your affiant, have nothing of a political or sectarian nature, but are wholly philosophical, based upon the teachings of Christ Jesus as set forth in the New Testament of the Bible, and upon the Golden Rule announced by Christ Jesus in His theory of the right way for all persons to live [93] in this world;

That, without warning, in the early morning of December 18th, 1942, four men, including the defendants mentioned in the complaint in regard to the entry of affiant's premises, showed to your affiant cards of identification as agents of the Federal Bureau of Investigation, at the same time forcing their way into affiant's premises and announced to your affiant that he was under arrest;

That they did not produce any order or arrest, nor was any crime committed by your affiant in the presence of said persons;

That the said men proceeded, against the will and under the protest of this affiant, to search his premises, to-wit a five-room residence;

That they produced no warrant of arrest, nor did they produce any warrant of search and seizure, although affiant and his wife protested against the invasion of their home and against such unlawful search and seizure, and called said persons' attention to the declarations in the Amendments to the United States Constitution against such search and seizure;

That said persons also informed affiant and his wife that they had no warrant for arrest or warrant for search and seizure, but that it was not necessary to have a warrant as they were acting under instructions;

That, after searching the entire premises, and leaving same in the utmost disorder and confusion, they seized your affiant, whom they kept under restraint during the entire time that they had been in his premises, and also seized a great number of

documents and personal property belonging to affiant and his wife, and required by force and under threat your affiant and his wife to fill out a questionnaire in their own handwriting and sign the same and, under threat, dictated the answers they were to make to said questionnaire, and took with them the signed questionnaire so dictated by them.

That said searchers remained upon the premises from approximately 7:30 A.M. to 12:00 M., during all of which time they kept your affiant under restraint; [94]

That said agents removed several boxes of materials from the house, the contents of which the affiant was not informed by said agents, nor was he permitted to make a list of the same;

That said affiant was not taken before any committing magistrate until approximately 2 P.M. on the 21 day of December, 1942, and during said time was not permitted to talk with any person except the persons who had invaded his home;

That at no time did your affiant give his consent to the search and seizure of his private papers and documents as set forth herein, but the same were forcibly seized and carried away against the protest of your affiant.

JACOB G. GLOECKLER.

Subscribed and sworn to before me this 13 day of Deecmber, 1943.

[Seal] H. O. CARLSON,

Justice of Peace in and for the County of Stanislaus, State of California.

Received Copy of the Within Counter Affidavit This 29th day of December 1943.

CHARLES H. CARR, A
United States Attorney.

[Endorsed]: Filed Dec. 29, 1943. [95]

[Title of District Court and Cause.]

COUNTER AFFIDAVIT OF PAULINE L. KELSO

State of California,
County of San Diego—ss.

Pauline L. Kelso, being first duly sworn, deposes and says:

That she resides at 1718 Union Street, in the City and County of San Diego, State of California;

That she has read the affidavit of Adam E. Wolf, Agent of the Federal Bureau of Investigation, and that said affidavit is not a completely accurate statement of the arrest of this affiant on the 18th day of December, 1942; that in answer thereto affiant states as follows:

That she is over the age of 21 years; is an American citizen having been born in the United States;

That she is a student of "Mankind United" organization, and has been for nearly four years;

That the dostrines of "Mankind United", as studied by your affiant, have nothing of a political or sectarian nature, but are wholly economic and philosophical, based upon the teachings of Christ Jesus, as set forth in the New Testament of the

Bible, and upon the Golden Rule announced by Christ Jesus in His theory of the right way [96] for all persons to live in this world;

That, without warning, in the early morning of December 18th 1942, two men and one woman forced their way into the premises of your affiant, announcing that they were agents of the Federal Bureau of Investigation, and showed affiant their identification cards; they also announced that your affiant was under arrest;

That said agents did not produce an order of arrest, nor was any crime committed in their presence;

That said two men, without the consent of and against the will of your affiant, proceeded to search the premises in which she lives, to-wit, a living room, a dining room and an alcove room;

That, although said agents at no time produced a warrant of arrest or a search and seizure warrant, they searched the entire premises of this affiant;

That on the evening before said arrest there *had a* meeting of a group of persons studying the teachings of "Mankind United" at your affiant's home, and some of the documents, papers and records concerning said meeting were seized along with other documents and papers this affiant had in her home;

That, after searching the entire premises belonging to your affiant and leaving same in disorder, they took your affiant, together with the documents, papers and records seized by said agents, to the County Jail;

That none of the documents, papers, records or personal property so seized and carried away by said agents were of a seditious nature;

That said agents as set forth in the complaint, falsely imprisoned your affiant in her premises from about 7:30 to 9:30 A. M. December 18th, 1942, when they took this affiant, together with the papers and documents which they had seized, to the San Diego County Jail where, to affiant's knowledge, no charge was made against this affiant, but affiant was confined before being taken before a committing magistrate until noon of the following day, Saturday, December 19th, 1942; [97]

That at no time did your affiant consent to the entry of her premises by said agents, nor to the carrying away by said agents of her personal documents, papers, etc, but that affiant protested against the action of said agents in restraining her in her liberty and forcibly searching her premises and taking therefrom the documents as set forth herein.

PAULINE L. KELSO

Subscribed and sworn to before me this 17th day of December, 1943.

[Seal] EDITH G. BENJAMIN,
Notary Public in and for the County of San Diego, State of California.

Received Copy of the Within Counter Affidavit This 29th day of December, 1943.

CHARLES H. CARR, A
United States Attorney.

[Endorsed]: Filed Dec. 29, 1943. [98]

[Title of District Court and Cause.]

COUNTER AFFIDAVIT OF MAX THEODORE MILLER

State of California,
County of Santa Clara—ss.

Max Theodore Miller, being duly sworn, deposes and says:

That he resides at 1264 Latham Street, Mountain View, Santa Clara County, California;

That he has read the affidavit of Louis D. Wine, Special Agent of the Federal Bureau of Investigation, and filed in support of the defense, and states that same is not a complete statement of the actions of said Louis D. Wine and other special agents of the Federal Bureau of Investigation that arrested your affiant on the 18th day of December, 1942;

That a full and complete statement of what occurred at that time is set forth by your affiant in this counter affidavit;

That in the early morning of December 18th, 1942, about 8:00 A. M., the doorbell rang and your affiant's wife went to the door.

Affiant's wife called him, and he went to the door and there [99] were two men standing on the porch who said they were agents of the Federal Bureau of Investigation; that one of them whose name, your affiant afterwards learned, was Louis D. Wine, told affiant that he was under arrest, and demanded admittance;

That your affiant asked to see a warrant for his

arrest and warrant to search his home; that said agent told affiant that they were in San Francisco or Los Angeles—that the men did not have them in their possession; that your affiant then told these men that he would not admit them to his home without seeing the warrants;

That this affiant asked the leader why they wanted to take him into custody, to which he replied, "For sedition"; that affiant then asked for a specific instance; that said agent answered, "I do not know. I have not seen a warrant;"

That this man, whom affiant afterwards knew as Mr. Wine, said "I want you to co-operate with me. We knew that you would resist arrest. We were told that you would ask to see a warrant and would try to prevent us from searching the house.";

That Mr. Wine stated that they would go and get the warrants, but in the meantime a guard would be thrown around the house and that all the neighbors would know about it, and no one would be permitted to leave or enter;

That your affiant told the agent that it was quite all right and the men left;

That they returned within approximately five minutes, and Mr. Wine told your affiant that he had called San Francisco and had received instructions to take whatever steps were necessary;

That Mr. Wine told your affiant he was under arrest and pointed a revolver at affiant, ordering him to throw up his hands; affiant complied immediately, after which he was again told to "stick

'em up," following it with an order that affiant open the door, with which order affiant also complied;

That two of said agents entered, putting handcuffs on your affiant, and then started to search;

[100]

That these agents asked your affiant if he had a gun on him, a. ran their hands over his body; affiant told said agents that they would find no weapons in his home;

That the two men then called outside and two more men entered the house, going through the living room into the kitchen and into affiant's wife's bedroom;

That the agents showed affiant identification cards that they were agents of the Federal Bureau of Investigation;

That your affiant never saw any warrant of arrest, nor was any crime committed by said affiant in the presence of said agents;

That affiant was never shown any search warrant, but that without affiant's consent and against his will, they searched affiant's premises including bedroom, office, living room, hall and basement;

That your affiant continually protested against their actions, including their searching all of the rooms of his house and affiant told said agents that he understood the Constitution of the United States stated that they had to have a search warrant showing the particular articles to be seized;

That said agents said that was not necessary; that they were acting under instructions;

That said agents took turns standing guard over

your affiant, each one putting his hand in his coat pocket, as if holding a revolver;

That a special delivery letter and a registered letter arrived while these agents were searching affiant's home; that, before permitting said affiant to touch the registered letter, Mr. Louis D. Wine ripped open the envelope and glanced through the contents;

That your affiant never saw the special delivery letter after it came.

That later, a man whom your affiant believes to be the Chief of Police came in and looked at affiant and said, "I have never seen you before"; affiant replied, "No, I have not been in Mountain View very long"; that, in fact, affiant and his wife had moved into that particular [101] house late in May;

That affiant told the party whom he believes was the Chief of Police, that he could go to Palo Alto, six or seven miles away, and get all the information he wanted about your affiant, because affiant was born and raised there;

That said agents searched affiant's entire premises, leaving the same in the utmost disorder;

That said agents remained on affiant's premises from about 8:00 A.M. until 12:30 P.M., during all of which time said affiant was held in the custody of said persons who had entered his premises, was not permitted to any liberty, nor was he permitted to leave said premises or to notify any outside persons of his imprisonment, nor was he brought before any committing magistrate until about the

hour of 2:00 o'clock on the 21st day of December, 1942;

That said agents removed from your affiant's premises three or four boxes of material, of the contents of which affiant nor his wife were not allowed to make a list;

That during the time affiant was held in custody by said agents in his home, one of the agents took a number of flashlight pictures;

That at no time did your affiant consent to the entry of his premises on the 18th day of December, 1942, nor to the carrying away of the personal documents of himself and wife, taken by these defendants, or any other agents of the Federal Bureau of Investigation, but that affiant continually protested against the action of said agents in restraining him in his liberty and forcibly searching his premises and taking therefrom the documents as set forth herein.

MAX THEODORE MILLER

Subscribed and sworn to before me this 15th day of December, 1943.

[Seal] WILLIAM P. WRIGHT,
Notary Public, in and for the County of Santa Clara, State of California.

My Commission Expires Oct. 18, 1946.

Received Copy of the Within Counter Affidavit, This 29th day of December, 1943.

CHARLES H. CARR, A
United States Attorney.

[Endorsed]: Filed Dec. 29, 1943. [102]

[Title of District Court and Cause.]

COUNTER AFFIDAVIT OF MRS. VIRGINIA S. MILLER

State of California,
County of Santa Clara—ss.

Mrs. Virginia S. Miller, being duly sworn, deposes and says: I am the wife of Max Theodore Miller.

We live at 1264 Latham Street, Mountain View, Santa Clara County, California.

Early in the morning of December 18th, 1942, my doorbell rang, waking me up. There were two men at the door. They asked if Max Miller was at home. I said, "Yes", and asked them what they wanted to see him for. They said that they were from the Federal Bureau of Investigation and that they had instructions from the United States District Attorney to arrest Max Miller on a felony charge and they demanded admittance into my home. I asked them if they had a search warrant. They showed me what I believed to be identification cards, but which I could not read in the dark through the locked screen dor. I asked if that was a search warrant or if that was their identification, and they admitted that it was only their identification. Ther names, I believe, were Louis D. Wine, and John W. Schaller; [103]

I again asked them if they had a search warrant, and they said that they did not have one with them. They said they did not need one, that they

were Federal Bureau of Investigation agents, and that the warrant for arrest of Mr. Miller was in Los Angeles. I told them that I was aware of my rights under the Constitution, and knew that they also were aware of my rights, and that I would not admit them into my home without a search warrant.

They said they were not there to argue with me, that they wanted to see Mr. Miller. I said I would call him, and—closing the front door—I went to do so.

While my husband was dressing, I took a copy of the Constitution of the United States to the door and read Amendment IV, pertaining to Search and Seizure, over the repeated interruptions from the one apparently in charge—whom I later learned was Mr. Louis D. Wine—in which he stated that he knew all about it. I asked him if he were above the Constitution, and he said; "No", but that he was acting under instructions.

When my husband came to the door, Mr. Wine told him *what* he was under arrest and again demanded admittance. I believe Mr. Miller asked him what the charge was, and one of them said, "sedition". Mr. Miller asked to see the warrant for his arrest and warrant to search his home and was told that they were in Los Angeles, or San Francisco. Mr. Miller asked how long it would take to get them. One of the men said it would probably take a couple of hours. Mr. Miller stated that he would not admit them to his home without seeing the warrants.

Mr. Wine stated that they would get the warrants, but in the meantime, a guard would be thrown around the house, that all the neighbors would know about it, and that no one would be permitted to leave or enter. Mr. Miller told him that was all right, and the men left.

Shortly thereafter the men returned and demanded to see Mr. Miller. When he appeared, Mr. Wine said that he had called San Francisco and had received instructions to take whatever steps were necessary. [104]

Mr. Wine then told my husband that he was under arrest and I saw him point a gun at Mr. Miller and heard him order Mr. Miller to put up his hands. Mr. *Husband* complied instantly, after which the man again told him to "stick 'em up," following it with an order to open the door, with which my husband complied. The two men entered, put handcuffs on my husband, and then searched him. He told them they would find no weapons in our home.

Then they asked me if I had a gun and turned me around, searching for a weapon. I told them that I had no weapon and would not use one if I had it.

They called outside and two more men entered the house, going through the living room into the kitchen and my bedroom.

They all showed my husband what they claimed were identification cards.

They ordered him—still handcuffed—to sit down on a davenport near the front door, and one of

the men stood over him while the others searched our premises; bedroom, office, living room and hall.

They demanded the key to the basement. I did not see them search there, but when I entered the basemnet later, it was obvious from the disorder that it had been quite thoroughly searched.

I was told that I must sit in the living room and that my husband and I could not converse. I do not know how thorough a search they made from that point on. They shut the office door so I was unable to see the proceedings.

They remained there searching the house and taking therefrom papers and documents, from 8:00 o'clock in the morning until 12:30 in the afternoon. One or another of the men would answer the telephone and door bell when they rang, stating—on occasion—that "Max" was not available.

While they were there the railway expressman and special delivery mail man came, and I was permitted to sign for packages and also for a special delivery letter. The regular mail man came with a registered letter. Mr. Wine handed the receipt to my husband to sign [105] which he did. Without permitting Mr. Miller to touch the letter, Mr. Wine opened it, glanced through the contents, then returned them to the envelope. I do not believe the registered mail was taken from the premises by the Federal Bureau of Investigation agents, although I have not been able to locate the special delivery letter. I do not know what became of it.

During the morning, I asked several times to be

permitted to make myself and my husband some coffee or some breakfast. I was told to sit where I was. They would not permit us to eat while they were there, approximately from 8:00 A.M. to 12:30 P.M., although they knew that we had not had any breakfast.

Sometime during the morning one of the men, Mr. Good I believe, brought a strongbox from the bedroom into the living room, stating that there was some money in it that should be accounted for. Later they counted the money and had my husband check the amount, together with several other small amounts which they found around the house. Before they left Mr. Good prepared a receipt for $1,201.85 which he and Mr. Wine signed, and had my husband verify. The strongbox, the above amount of money, personal documents (including automobile insurance policies and personal possessions of myself), and other records and documents which they found in the strongbox—with the exception of my marriage certificate and my birth certificate, which the agents permitted me to retain—were removed from the premises by Mr. Wine personally.

One of the men brought my pocket-book to Mr. Wine, stating that there was money in it. Mr. Wine proceeded to search my pocket-book, removing several receipts, including a money order receipt and a booklet entitled, "The Law and Gospel of Economics". When I asked Mr. Wine whether or not I was under arrest he said, "No". I then asked him why my liberty was restricted and my

personal possessions removed from my custody. He stated that they were needed for evidence and that he was acting under instructions. In fact, every time I questioned him in connection with searching our property, Mr. Wine [106] stated that he "was acting under instructions," and that he "was not there to argue with me." Mr. Wine did not remove any funds from my pocket-book.

Sometime during the morning Mr. Wine left the premises and returned a few moments later with a man in the uniform of a policeman, to whom he referred as "Chief" (and who may have been the Chief of Police in Mountain View, whose name I have been informed is Excell). The "Chief" wandered around the house and watched the proceedings. In Mr. Wine's presence, I told the "Chief" that as a matter of record, I wished to state that these men had entered my home without a search warrant. Mr. Wine said that my husband had resisted arrest. I later told the "Chief" that my husband had not resisted arrest, but had requested to see the warrant for his arrest. The "Chief" said that he did not have anything to do with it.

When the men left they took three or four boxes of material from the house, of the contents of which I was not informed.

(MRS.) VIRGINIA S. MILLER

Subscribed and sworn to before me this 15th day of December, 1943.

[Seal] WILLIAM P. WRIGHT,
Notary Public in and for the County of Santa Clara, State of California.

My Commission Expires Oct. 18, 1946.

Received Copy of the Within Counter Affidavit This 29th day of December, 1943.

CHARLES H. CARR, A
United States Attorney.

[Endorsed]: Filed Dec. 29, 1943. [107]

[Title of District Court and Cause.]

COUNTER AFFIDAVIT OF BAY BURNS SHARP

State of California,
County of Los Angeles—ss.

Bay Burns Sharp, being first duly sworn, deposes and says:

That at all times mentioned in the complaint and the pleadings herein, affiant was a resident of 1237 "R" Street, in the City and County of Fresno, State of California;

That he has read the affidavit of Howard H. Davis, one of the defendants in the above-entitled suit, and that said affidavit is not a completely accurate statement of the arrest of this affiant at his home on the 18th day of December, 1943; that in answer thereto, affiant wishes to set forth the

facts that occurred at the time of his arrest, as known to him;

That, without warning, in the early morning of December 18th, 1942, that three men, now known to your affiant to be agents of the Federal Bureau of Investigation, forced their way into affiant's premises and announced that he was under arrest, and showed your affiant what was [108] purported to be a warrant of arrest; that at that time said agents were on the front porch of affiant's residence, and that, against affiant's protests and will, said agents pushed their way into your affiant's residence; that said agents did not produce any warrant of search and siezure, or any legal papers purporting to give any officer the right to search affiant's premises or seize any property thereon;

That your affiant is now over the age of 62 years; was born in the United States, and has always been an American citizen; That affiant is a student of the doctrines of the "Mankind United" organization, and has been for more than five years; That the doctrines of "Mankind United" as studied by your affiant, have nothing of a political or sectarian nature, but are wholly economic and philosophical, based on the teachings of Christ Jesus as set forth in the King James' Version of the New Testament of the Bible, and upon the Golden Rule announced by Christ Jesus as the fundamental Universal Divine Law as a guide for mankind in all their relationship with each other;

That during the time your affiant was dressing so that he might obey the warrant of arrest and leave the premises, said agents took a number of

flashlight pictures of affiant and his premises, and then two of said agents took your affiant to the United States Marshal's Office in Fresno, where he was questioned; that they then took him to the Madera County Jail; that on or about the 23rd day of December, 1942, affiant was taken to the Los Angeles County Jail, in the City of Los Angeles;

That your affiant was never taken before any committing magistrate but was imprisoned and first appeared before the Hon. Leon R. Yankwich, a Judge of the above-entitled Court, on or about the 18th day of January, 1943;

That your affiant has been informed and believes that, without any further exhibition of warrant of search and seizure after his removal from his home to prison, at least seven agents of the Federal Bureau of Investigation searched his entire premises, and took away a great number of papers, documents, records and other personal property [109] belonging to your affiant;

That at no time did this affiant consent to the entry and/or search of his premises, or the carrying away of the personal documents belonging to this affiant and taken away, by said agents, or any other agents of the Federal Bureau of Investigation, but that affiant protested again the actions of said agents, as set forth herein.

BAY BURNS SHARP

Subscribed and sworn to before me this 13th day of December, 1943.

[Seal] MABEL A. DOANBURG

Notary Public in and for the County of Los Angeles, State of California.

Received Copy of the Within Counter Affidavit, this 29th day of December, 1943.

CHARLES H. CARR, A
United States Attorney

[Endorsed]: Filed Dec. 29, 1943. [110]

[Title of District Court and Cause.]

COUNTER AFFIDAVIT OF HOMER G. WILCOX

State of Nevada
County of Clark—ss.

Homer G. Wilcox, being first duly sworn, deposes and says:

That at all times mentioned in the complaint and the pleadings herein, he was a resident of 1716 Union Street, in the City and County of San Diego, State of California;

That your affiant is over 55 years of age; was born in the United States, and is an American citizen;

That affiant is a student of the doctrines of the "Mankind United" organization, and has been for more than five years;

That affiant earns his living as a teacher of the doctrines of the "Mankind United" organization;

That the doctrines of "Mankind United", as studied by your affiant, have nothing of a political or sectarian nature, but are wholly philosophical, based upon the teaching of Christ Jesus, as set

forth in the New Testament of the Bible, and upon the Golden Rule announced by Christ Jesus in His theory of the right way for all persons to live in this world; [111]

That prior to this proceeding your affiant has never been charged with, or arrested for, any crime whatsoever;

That your affiant has read the affidavit of Earl P. Staten, one of the defendants in the above entitled suit, and that said affidavit is not a completely accurate statement of the arrest of this affiant on the 18th day of December, 1942; that in answer thereto affiant wishes to set forth the following facts as to what took place at the time of his arrest;

That at about the hour of 7:30 in the morning of December 18th, 1942, the defendants Robert O'Keefe, Earl P. Staten, Robert Montgomery, Newell Williams and Adam Wolf, did force their way into the premises of your affiant;

That when your affiant went to the door and opened it defendant Earl P. Staten and other agent stood there, and the said Agent Staten pulled a paper from his pocket and said he had a warrant for your affiant's arrest on a charge of sedition, and that he, the said Staten, was to look over your affiant's place;

That affiant asked the said Earl P. Staten if he had a saerch warrant, to which Staten replied that he did not need a search warrant with the warrant for arrest;

That when your affiant took hold of the door of his home to prevent said agents entering, said Agent Staten quickly forced the door open and

entered the kitchen of your affiant's home with the other agent;

That said Earl P. Staten instructed the other agent to pass through the house and open the front door and admit other agents of the Federal Bureau of Investigation who were waiting there into your affiant's home;

That never at any time did the said agent Earl P. Staten state to your affiant that, as an incident to affiant's arrest, it was said agents' duty to make a search of affiant's premises to ascertain whether or not there was any literature, pamphlets, documents, books, or other articles of the class referred to in the accusation that had [112] been brought against your affiant, or in the indictment; that said agent never, at any time, told this affiant that he, the said agent, was duty bound to search the premises for articles of a seditious nature or articles that might have been utilized by said affiant in said enterprise;

That when the said agent returned from the front door, after admitting the other agents awaiting entrance there, said Earl P. Staten told the said agent to sit down with your affiant in the kitchen while affiant read the warrant for his arrest;

That, after reading said warrant, your affiant went to the front apartment of his home where he saw Agent Robert Montgomery looking through the contents of large envelopes and boxes belonging to said affiant; that the said Montgomery produced his identification but that another person who was taking pictures of everything in the place did not produce any identification whatsoever;

That while in your affiant's home, said Earl P. Staten's manner was extremely arrogant and egotistical, while Mr. O'Keefe and Mr. Montgomery, with whom your affiant conversed, were courteous; that said agent Staten used affiant's telephone without asking affiant's permission, while Mr. O'Keefe asked permission to use affiant's typewriter;

That said Federal Bureau of Investigation agents opened doors, boxes and packages, and demanded your affiant's keys to go through affiant's garage and shed;

That your affiant called said agents' attention to the Fourth and Fifth Amendments to the United States Constitution in regard to search and seizure, but one of the agents replied, "You may think you knew what your rights are under the Constitution, but I know what rights are given to me by Congress.";

That said agents proceeded, without the consent and against the will of this affiant, to search his entire premises; that they then proceeded to seize and take away papers and documents, together with moving picture films, stereopticon slides, maps, etc., including many [113] personal and private papers and documents of your affiant;

That, after searching the entire premises, and leaving same in disorder, said agents seized your affiant and took him, together with all the papers, documents, etc., which they had seized as set forth herein, from the premises;

That said agent Earl P. Staten remained in the affiant's home for approximately two hours, leav-

Judgment entered Apr. 25, 1944. Docketed Apr. 25, 1944. Book 25, Page 141. Edmund L. Smith, Clerk. By P. D. Hooser, Deputy.

[Endorsed]: Filed April 25, 1944. [122]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the plaintiffs in the above entitled cause, and each of them, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment entered in this action on the 25th day of April, 1944, dismissing the complaint.

Dated this 28th day of April, 1944.

LORRIN ANDREWS and
A. L. WIRIN
By A. L. WIRIN
Attorneys for Plaintiffs

Seen:

CHARLES H. CARR,
United States Attorney
By J. STEWART. [123]

[Title of District Court and Cause.]

UNDERTAKING FOR COSTS ON APPEAL

Case No. 2850 R.J. Civil—Complaint for damages for false imprisonment and unlawful search and seizure.

Whereas, Arthur L. Bell, et al, of the State of California, is about to appeal to the Circuit Court

of Appeals for the Ninth Circuit from the judgment of dismissal entered April 25, 1944:

Now, Therefore, in consideration of the premises and of such appeal the undersigned, National Automobile Insurance Company, a corporation organized and existing under and by the virtue of the laws of the State of California, as Surety, does hereby undertake and promise on the part of the Appellant that said Appellant will pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, not exceeding Two Hundred Fifty and No/100 Dollars, ($250.00), to which amount it acknowledges itself bound.

In Witness Whereof, the said National Automobile Insurance Company has caused this obligation to be signed by its duly authorized Attorney-in-Fact at Los Angeles, California, and its corporate seal to be hereto affixed, this 28th day of April, 1944.

[124]

[Seal] NATIONAL AUTOMOBILE INSURANCE COMPANY

By LLOYD H. JOHNSTON

Attorney-in-Fact

Examined and Recommended for Approval, as provided in Rule 13.

A. L. WIRIN

Attorney

By J. NIETZ

ing the other agents to carry out the search and seizure of affiant's property, after he, the said Earl P. Staten, departed at approximately 9:30 A.M.;

That during all the time said agents were carrying on their search and seizure of affiant's property, this affiant was imprisoned in his own home, as a prisoner of said agents;

That the above-named agents arrived at affiant's home at approximately 7:30 A.M., and affiant was detained against his will and without his consent at his said home by the persons named in this affidavit until the hour of 11:30 A.M.; that affiant was kept a prisoner in said premises during all of said time without being taken before a committing magistrate;

That at no time did this affiant consent to the entry of his premises, nor to the carrying away of the personal documents belonging to this affiant and taken by these defendants or any other agents of the Federal Bureau of Investigation, but that affiant continually protested against the action of said agents in restraining him in his liberty and forcibly searching his premises and taking therefrom the documents as set forth herein.

HOMER G. WILCOX

Subscribed and sworn to before me this 24th day of December 1943.

[Seal] MARY GIBSON,

Notary Public in and for the County of Clark, State of Nevada. [114]

Received Copy of the Within Counter Affidavit This 29th day of December, 1943.

CHARLES H. CARR, A
United States Attorney

[Endorsed]: Filed Dec. 29, 1943. [115]

[Title of District Court and Cause.]

COUNTER AFFIDAVIT OF SHANNA T. JAKEMAN

State of California
County of Los Angeles—ss.

Shanna T. Jakeman being first duly sworn, deposes and says:

That at all times mentioned in the complaint and the pleadings herein, affiant resided in Apartment 307 at 503 South Union Drive, in the City and County of Los Angeles, State of California;

That she has read the affidavit of Robert T. Pugh, one of the defendants in the above-entitled suit, and that said affidavit is not an accurate statement of the actions of said Robert T. Pugh and other special agents of the Federal Bureau of Investigation that arrested your affiant on the 18th day of December, 1942;

That a full and accurate statement of what occurred at that time is set forth by your affiant in this counter affidavit;

That without warning in the early morning of

December 18th, 1942, three men came to the door of the partment where your affiant resided;

That at that time your affiant was in bed, being quite ill, having been in that physical condition for about ten days, and it was with [116] great difficulty that she arose and went to the door;

That affiant asked the men what they wanted, and they told her they had come to arrest her;

That the men pushed their way inside and told her that they were Federal Bureau of Investigation agents;

That said agents did not produce a warrant of arrest, nor a search and seizure warrant, but proceeded to search the premises of your affiant, consisting of living room, kitchen and bathroom;

That prior to this proceeding your affiant has never been charged with, or arrested for, any crime whatsoever, nor did she commit any crime in the presence of the said agents;

That affiant is now over 21 years of age; was born in the United States, and is an American citizen;

That affiant is a student of the doctrines of the "Mankind United" organization, and has been for more than three years;

That affiant is a housewife, taking care of her home;

That the doctrines of "Mankind United" organization as studied by your affiant, have nothing of a political or sectarian nature, but are wholly educational and economic, based upon the Golden Rule;

That the above-mentioned persons who entered this affiant's premises on the 18th day of December,

1942, proceeded, without the consent of, and against the will of your affiant to search her premises for documents, records and papers which were the personal property of this affiant;

That while in affiant's apartment, said agents presented to your affiant a paper and told her that if she did not sign the same they would get a warrant and it would be hard for her; that under duress affiant signed said paper;

That affiant's son asked said agents if they had a warrant to search and seize, to which they replied that they did not, but that the showing of their cards of identification was sufficient;

That said agents remained in your affiant's apartment for about five hours, searching same, without the consent and against the will [117] of affiant;

That during all of said time your affiant was imprisoned in the living room of her apartment, by said agents; that affiant was not permitted any liberty, nor was she permitted to leave said living room or to notify any outside person of her imprisonment;

That at about 12:30 P.M., after searching the entire premises, said agents took your affiant, with the papers, documents and other personal property which they had seized, to an office on Spring Street, in the City of Los Angeles, where they asked affiant a great number of questions;

That said agents told your affiant that she was not compelled to answer their questions, but that it would be better for her if she did;

That your affiant was kept in the Spring Street Office for approximately 1½ hours, at which time

affiant became so faint and ill from lack of nourishment that said agents took her out to lunch, after which, without informing her where they were taking her, they took your affiant to the County Jail;

That your affiant was never taken before any committing magistrate, but was imprisoned and first appeared before the Hon. Harry A. Hollzer, a Judge of the above-entitled Court, on or about the 21st day of December, 1943.

That at no time did this affiant consent to the entry of her premises; that at no time did affiant willingly consent to the search of her apartment, or to the carrying away of the personal documents belonging to her and taken by these defendants, as set forth herein.

SHANNA T. JAKEMAN

Subscribed and sworn to before me this 13th day of December, 1943.

[Seal] MABEL A. DOANBURG
Notary Public in and for the County of Los Angeles, State of California.

Received Copy of the Within Counter Affidavit This 29th day of December, 1943.

CHARLES H. CARR A
United States Attorney

[Endorsed]: Filed Dec. 29, 1943. [118]

At a stated term, to wit: The September Term, A. D. 1943 of the District Court of the United States of America, within and for the Central

Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 17th day of January in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Ralph E. Jenney, District Judge.

[Title of Cause.]

No. 2850-RJ Civil

ORDER THAT MATTERS STAND SUBMITTED ON BRIEFS ALREADY FILED

The above-entitled causes coming on for hearing on defendants' motion to dismiss and motions for summary judgment; Wm. W. Worthington, Esq., Assistant U. S. Attorney, appearing for the Government; Eloise Mellor, Court Reporter, being present and reporting the proceedings:

It is ordered that these matters stand submitted on briefs already filed. [119]

At a stated term, to wit: The February Term, A. D. 1944 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 20th day of March in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Ralph E. Jenney, District Judge.

[Title of Cause.]

No. 2850-RJ Civil

ORDER GRANTING DISMISSAL

This cause coming on for further proceedings; Lorrin Andrews, Esq., appearing for the plaintiffs; Mildred L. Kluckhohn, Assistant U. S. Attorney, appearing for the defendants; C. W. McClain, Court Reporter, being present and reporting the proceedings;

The Court states that it has no jurisdiction in this case and motion for dismissal is granted. [120]

In the District Court of the United States in and for the Southern District of California, Central Division

No. 2850-RJ Civil

ARTHUR L. BELL, Individually, and as an Associate of and Division Superintendent of "MANKIND UNITED", a Voluntary Association, for and in behalf of said "MANKIND UNITED" and the associates thereof, et al.,

Plaintiffs,

vs.

R. B. HOOD, THEODORE CRUISE, et al.,

Defendants.

JUDGMENT

The above cause having come on for hearing on the 17th day of January, 1944, upon the motions

to dismiss of the following defendants: Theodore Cruise, R. B. Hood, John Roche, Robert T. Pugh, Edward A. Furbush, Earl P. Staten, Howard H. Davis, Robert M. Montgomery, Carl B. Sherman and Dennis G. Smith, the plaintiffs appearing by their attorneys Lorrin Andrews and A. L. Wirin, and the defendants appearing by their attorneys Charles H. Carr, United States Attorney, James L. Crawford and Mildred L. Kluckhohn, Assistant United States Attorneys, and the matter having been submitted on briefs, and the court having been fully advised in the premises; and rendering its opinion in open court on March 20, 1944;

It Appearing to the Court That the court has no jurisdiction, the court, pursuant to 28 U.S.C.A., Section 80, orders the suit dismissed on the ground that said suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of [121] this court;

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the within action be and the same is hereby dismissed pursuant to 28 U.S.C.A. Section 80, on the ground that said suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of this court.

Dated this the 24th day of April, 1944.

RALPH E. JENNEY
United States District Judge

Approved as to form:
LORRIN ANDREWS
A. L. WIRIN
Attorneys for Plaintiffs

State of California
County of Los Angeles—ss.

On this 28th day of April, in the year 1944, before me, Ruth E. Harris, a Notary Public in and for said County and State, personally appeared Lloyd H. Johnston, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the National Automobile Insurance Company, and acknowledged to me that he subscribed the name of the National Automobile Insurance Company thereto as principal, and his own name as Attorney-in-fact.

[Seal] RUTH E. HARRIS
Notary Public in and for said County and State.
My Commission Expires Sept. 27, 1947.

[Endorsed]: Filed April 28, 1944. [125]

[Title of District Court and Cause.]

PLAINTIFFS' AND APPELLANTS' STATEMENT OF POINTS TO BE RELIED UPON ON APPEAL

The plaintiffs and appellants hereby designate the following points and grounds of appeal:

1. The judgment of the District Court dismissing the complaint for want of jurisdiction abridges the plaintiffs' and appellants' right to freedom from unreasonable searches and seizures in violation of the Fourth Amendment to the Constitution of the United States.

2. The judgment of the District Court dismissing

the complaint for want of jurisdiction is erroneous in that said District Court had jurisdiction over the persons of the defendants and the subject matter of the complaint.

LORRIN ANDREWS and
A. L. WIRIN
By A. L. WIRIN
Attorneys for Plaintiffs

Received copy of the within this 28 day of April, 1944.

CHARLES H. CARR HKM
U. S. Atty.
Attorney for Defendants

[Endorsed]: Filed May 3, 1944. [126]

[Title of District Court and Cause.]

PRAECIPE AND INSTRUCTIONS TO CLERK RE PREPARATION OF RECORD

To the Clerk of the Above Entitled Court:

You will please prepare a transcript of record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, under the appeal heretofore taken herein, and include in said transcript the following pleadings, proceedings, orders and documents, to wit:

1. Complaint, filed April 7, 1943.

2. Motion to dismiss, by defendant Theodore Cruise, filed June 8, 1943.

3. Amended motion to dismiss of defendant Theodore Cruise, filed August 28, 1943.

4. Affidavit of R. B. Hood, filed August 28, 1943.

5. Motions to dismiss of defendants R. B. Hood, John Roche, Robert T. Pugh, Edward A. Furbush, Earl P. Staten, and Howard H. Davis, filed August 28, 1943. [127]

6. Affidavit of R. B. Hood, filed August 28, 1943.

7. Notice of motion and motion to dismiss of defendants Robert M. Montgomery, Carl B. Sherman, and Dennis G. Smith, filed November 18, 1943.

8. Notice of motion and motion for summary judgment, filed. November 18, 1943.

9. The following affidavits, filed on December 3, 1943: George M. Langdon, Augustus F. Scheimerhorn, John C. Norris, Louis D. Wine, Carl B. Sherman, Dennis G. Smith, H. Frank Angell, Richard C. Thompson, Robert T. Pugh, Adam E. Wolf, Earl P. Staten, and Howard H. Davis.

10. The following counter affidavits, filed December 29, 1943: A. Ray Elsea, Marin J. Elsea, M. Elizabeth Gloeckler, Jacob Gloeckler, Pauline L. Kelso, Max Theodore Miller, Virginia S. Miller, Bay Burns Sharp, Homer G. Wilcox, and Shanna T. Jakeman.

11. Copies of all minutes, orders, and entries.

12. Bond on appeal.

13. Transcript of proceedings. March 20, 1944 (oral opinion of Judge Ralph E. Jenney).

14. This Praecipe.

LORRIN ANDREWS and
A. L. WIRIN
By A. L. WIRIN
Attorneys for Plaintiffs

Received copy of the within this 28 day of April, 1944.

CHARLES H. CARR HKM
U. S. Atty.
Attorney for Defendants

[Endorsed]: Filed May 3, 1944. [128]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 128 inclusive contain full, true and correct copies of: Complaint for Damages for False Imprisonment and Unlawful Search and Seizure; Notice of Motion of Theodore Cruise to Dismiss; Motion of Theodore Cruise to Dismiss; Amended Motion of Theodore Cruise to Dismiss; Affidavit of R. B. Hood; Notice of Motion of R. B. Hood et al to Dismiss; Affidavit of R. B. Hood; Notice of Motion and Motion of Robert M. Montgomery to Dismiss; Notice of Motion and Motion of R. B. Hood et al for Summary Judgment; Affidavits of George M. Langdon, Augustus F. Schermerhorn; John C. Norris; Louis D. Wine, Carl B. Sherman, Dennie G. Smith, H. Frank Angell, Richard C. Thompson, Robert T. Pugh, Adam E. Wolf, Earl P. Staten, and Howard H. Davis; Counter-Affidavits of A. Ray Elsea, Marion J. Elsea, Elizabeth Gloeckler, Jacob Gloeckler, Pauline

L. Kelso, Max Theodore Miller, Virginia S. Miller, Bay Burns Sharp, Homer G. Wilcox and Shanna T. Jakeman; Minute Orders Entered January 17, 1944 and March 20, 1944 respectively; Judgment; Notice of Appeal; Undertaking for Costs on Appeal; Plaintiffs' and Appellants' Statement of Points to be Relied Upon on Appeal and Praecipe and Instructions to Clerk re Preparation of Record which, together with Reporter's Transcript of Oral Decision of the Court transmitted herewith, constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to $52.10 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 29 day of May, 1944.

[Seal] EDMUND L. SMITH,
Clerk
By THEODORE HOCKE
Deputy Clerk.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California
March 20, 1944

Appearances:

For the Plaintiffs:

Charles H. Carr, Esq., United States Attorney; by
Mildred L. Kluckhohn, Assistant United States Attorney.

For the Defendants:

Lorrin Andrews, Esq., 709 Fay Building, Los Angeles, California. [1*]

Los Angeles, California,
Monday, March 20, 1944.
10:30 A.M.

The Court: In the matter of Bell vs. Hood, No. 2850, and Elliott vs. Manion, No. 2796, are the plaintiffs ready?

Mr. Andrews: I am here in the case of Bell, your Honor. In the Manion case, Mr. Wirin asked me to apologize to your Honor. He was called to the State of Washington, and will be back tomorrow morning. It is difficult to get around nowadays.

The Court: Very well. You appear, Miss Kluckhohn, for the defendants in each case?

Miss Kluckhohn: Yes.

The Court: For the benefit of counsel, I shall

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

take up the matter of Bell vs. Hood first. I shall go into my reasons in this matter in some detail. Although much of it might be considered to be dictum in this particular case, it will show counsel my views for their future guidance. As it is not going to be a published opinion, I haven't any objection to doing it informally, for the benefit of counsel.

This is an action for damages for false imprisonment and unlawful search and seizure.

The matters now before the Court are the motions to dismiss of (1) Theodore Cruise, (2) R. B. Hood, John Roche, Robert T. Pugh, Edward A. Furbush, Earl P. Staten and Howard [2] H. Davis, and (3) Robert M. Montgomery, Carl B. Sherman and Dennis G. Smith.

There is also a Motion for Summary Judgment in favor of all the defendants except Theodore Cruise.

The motion to dismiss is made upon the ground that the complaint fails to state a claim against the defendants upon which relief can be granted, for the following reasons:

1. Duly appointed and authorized officers and agents of the United States Government are immune from civil process for damages for acts done within the scope of their authority.

2. The searches and seizures were made incidental to and contemporaneously with lawful arrests and were valid, abridging no rights under the Constitution of the United States.

Plaintiffs contend that the defendant F.B.I.

agents (one defendant, Merle Armstrong, who has not appeared, is alleged to be on the police force in the City of Los Angeles) were acting beyond the scope of their authority; that they had no search warrants; that, in most instances, the arrests of the plaintiffs were made without warrants of arrest and the warrants of arrest were not shown to plaintiffs herein when that was requested; that the searches and seizures were not incidental to arrests, but were exploratory and general and made solely to find evidence of plaintiffs' guilt of some crime; and that the defendants did not cause the plaintiffs to be brought before a committing officer [3] immediately, or within a reasonable time after the arrest.

The complaint alleges, among other things, that on December 17, 1942, the individual plaintiffs herein were indicted by the Grand Jury for this district, charged with a violation of Section 34, Title 50, United States Code.

Paragraph IX of this complaint alleges:

> "That on or about the 17th day of December, 1942, defendant R. B. Hood and each of the other defendants, unlawfully conspired with each other to act beyond their authority as said Federal Bureau of Investigation agents and police officer respectively, and agreed that they would abridge the Constitutional rights of the plaintiffs as guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States to be free from the deprivation of liberty and property without due process of

law, and to be free from unreasonable searches and seizures, and agreed unlawfully to simultaneously, in the early morning of December 18th, 1942, search the homes of the individual plaintiffs herein without any warrants of search or seizure, and unlawfully to seize the papers, documents and effects of said plaintiffs and of 'Mankind United', and falsely to imprison the individual plaintiffs by unlawfully arresting some of the individual plaintiffs without a warrant of arrest and unreasonably [4] to delay the taking of all of the individual plaintiffs before a committing officer, in order to effectuate the unlawful searches and seizures aforesaid."

Paragraph X alleges that on December 18, 1942, the defendants and each of them, in order to carry out the terms and conditions of the illegal conspiracy, and solely therefor, arrested and imprisoned the individual plaintiffs and searched their homes and seized and carried away their books, papers and effects and those of "Mankind United."

The allegations of Paragraph XI amplify and make more specific the general allegations of Paragraph X.

The balance of the complaint alleges that the plaintiffs have been residents of California for many years; that there was no likelihood of their leaving California, as the defendants well knew; *the* the defendants had no search warrants; that, in the instances in which the arrests were made without warrants of arrest, the defendant had no

reasonable ground to believe that the plaintiff so arrested was guilty of a felony; that there was no likelihood that the plaintiffs would escape before a warrant of arrest could be obtained; that the plaintiffs were not taken immediately before a committing officer; that plaintiff "Mankind United" has been damaged $100,000.00; that plaintiff Bell has been damaged $155,000.00; and that the eleven other plaintiffs have each been damaged $75,000.00; [5] making a total of damages asked of $1,000,000.00.

The question of jurisdiction has not been raised, but this Court has the power, under Section 80 of 28 USCA, to institute an inquiry to determine that question. McNutt v. General Motors, etc. Corp., 298 U. S. 178, 182, 189; Robinson v. Anderson (Cal.) 121 U. S. 522. See also Judge Yankwich's decision in Allen v. Clark, 22 Fed. Supp. 898, at 900.

The jurisdiction of this court is alleged in Paragraph I of the complaint as follows:

> "Jurisdiction of this Court is founded upon a Federal question arising under the Fourth and Fifth Amendments to the Constitution of the United States; and Title 5, U. S. Code; Sections 300 and 300a, as more fully appears hereinafter. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00). Jurisdiction of this Court is founded upon the Federal question involving the rights of the individual plaintiffs and each of them to be free from deprivation of liberty without due pro-

cess of law by false and unlawful imprisonment; and the Constitutional rights of all the plaintiffs to be free from unreasonable searches and seizures. All of the persons who participated in the acts to be hereinafter complained of, with the exception of the defendant [6] Merle Armstrong, were at the time of the commission of said acts, and at all times herein have been, officers of the Federal Government, to-wit, Special Agents of the Federal Bureau of Investigation, U. S. Department of Justice, and claim to have acted under and by virtue of the provisions of Sections 300 and 300a of Title 5, U. S. Code aforesaid, and have acted in concert as is more particularly set forth hereinafter."

Where an illegal search has been made by federal officers in violation of the rights of the plaintiff under the fourth and Fifth Amendments, no action will lie in the federal court unless there is a diversity of citizenship between the parties or the circumstances are such that a federal court would have otherwise had jurisdiction, in other cases between such parties. The fact that a right of action arises under the Constitution of the United States because of the violation of a constitutional right, does not involve a controversy of such a nature as to give jurisdiction to the federal court under its judicial code, 28 USCA 41. Cornelius on Search and Seizure, 2nd Ed., Section 491, page 958. Taylor v. DeHart, District Court of Missouri, 1926, 22 Fed. (2d) 206 (action against prohibition agents for

damages for unlawful search), dismissed for want of jurisdiction, 274 U. S. 726; Dowling Bros. vs. Andrews, 7th Circuit, July 22, 1927, 19 Fed. (2nd) 961 (action to [7] recover value of whiskey alleged to have been lost to plaintiff by the acts of defendant, while he was acting as National Prohibition Director); Viles v. Symes, 10th Circuit, 129 Fed. (2d) 828, certiorari denied 318 U. S. 653 (action against a federal District Judge and others for damages for allegedly malicious prosecution and false imprisonment)

The action is dismissed under 28 USCA, Section 80.

I am, as I say, giving what might be considered as dictum in this particular case here, for the guidance of counsel.

The Fourth Amendment to the United States Constitution provides as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The provisions for arrest are found in Sections 591 and 595 of 18 USCA, and the pertinent portions are:

> "Sec. 591. For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by

any United States commissioner, * * * and agreeably to the usual mode of process against offenders in such [8] state (where offender may be found), * * * be arrested and imprisoned, or bailed, * * * for trial before such court of the United States as by law has cognizance of the offense. * * *"

"Sec. 595. It shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest United States Commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial. * * *"

Sections 300 and 300a of Title 5, USCA, provide as follows:

"Section 300. Officials for detection and prosecution of crimes. For the detection and prosecution of crimes against the United States, and for the acquisition, collection, classification, and preservation of criminal identification records and their exchange with the officials of states, cities, and other institutions, the Attorney General is authorized to appoint officials who shall be vested with the authority necessary for the execution of such duties."

"Section 300a. Federal Bureau of Investigation; authority of officers to serve warrants and make [9] arrests, authority to carry arms. The Director, Assistant Directors, agents, and inspectors of The Federal Bureau of Investiga-

tion of the Department of Justice are empowered to serve warrants and subpoenas issued under the authority of the United States; to make seizures under warrant for violation of the laws of the United States; to make arrests without warrant for felonies which have been committed and which are cognizable under the laws of the United States, in cases where the person making the arrest has reasonable grounds to believe that the person so arrested is guilty of such felony and where there is a likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be immediately taken before a committing officer. Such members of the Federal Bureau of Investigation of the Department of Justice are authorized and empowered to carry firearms."

Sections 841 and 842 of the Penal Code of the State of California provide as follows:

"Sec. 841. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission [10] of or an attempt to commit an offense, or is pursued immediately after its commission, or after an escape."

"Sec. 842. If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required."

When a public officer acts outside the scope of his authority or acts in a wanton, malicious and unlawful manner and, in either event, injures a private citizen, he is liable in an action for damages. Cooper v. J. F. T. O'Connor, et alia, C.A. D.C., 1938, 99 Fed. (2d) 135, 137, certiorari denied, 305 U. S. 643.

On the contrary, if the act complained of was done within the scope of the officer's duties as defined by law, the policy of the law is that he shall not be subjected to the harassment of civil litigation or be liable for civil damages because of a mistake of fact occurring in the exercise of his judgment of discretion, or because of an erroneous construction and appliction of the law. This rule of immunity was first applied and has been most universally observed in the case of judges. Bradley v. Fisher, 13 Wall. (80 U. S.) 335, 351-352; Alzua v. Johnson, 231 U. S. 106, 111; Cooper v. O'Connor, supra, and other cases therein cited. It has also been applied to cabinet officers. Spalding v. Vilas (Postmaster General), 161 U. S. 483, 498; Glass v. Ickes, Secretary of the Interior, 117 Fed. (2d) 273, certiorari denied 311 U. S. 718. In the cases which have [11] extended the privilege to administrative officers without policy-determining functions, the thing held to be privileged has usually, if not always, been an act in the general line of duty. Thus it has been held that a Special Assistant to the Attorney General cannot be sued for an improper indictment and trial (Yaseli v. Goff, 2nd Circuit, 12 Fed. (2d) 396, affirmed 275 U. S. 503, on au-

thority of Bradley v. Fisher and Alzua v. Johnson, supra); or a penintentiary warden for an improper imprisonment under color of law (where parole board had revoked probation) (Long v. Wood, App. D. C., 92 Fed. (2d) 211); or a United States consul (U. S., to Use of Parravicino v. Brunswick, App. D. C., 69 Fed. (2d) 383), or a division chief in the War Department (DeArnaud v. Ainsworth, 24 App. D. C. 167, appeal dismissed, 199 U. S. 616) for libel in an official report; or a Special Agent of the Bureau of Investigation, or other officers, for making charges before a grand jury along the lines of their respective functions (Cooper v. O'Connor, supra).

Then there is a general rule that a ministerial officer who acts wrongfully, although in good faith, is nevertheless liable in a civil action and cannot claim the immunity of the sovereign. There is also a general rule that if any officer—ministerial or otherwise—acts outside the scope of his jurisdiction and without authorization of law, he is liable in an action for damages for injuries suffered by a citizen as a result thereof. (See cases cited in [12] Cooper v. O'Connor, supra.)

From the foregoing it is clear that the privilege of immunity cannot be applied to the F.B.I. agents in preforming the ministerial duties which they are authorized to perform under Section 300a of Title 5 of USCA. Neither can the privilege of immunity contravene the Fourth Amendment of the Constitution. While the complaint does not allege that R. B. Hood made any of the arrests or searches

and seizures, it does allege that he and the other defendants conspired to act beyond their authority to make the arrests and searches and seizures alleged.

As to whether the arrests were lawful and the searches and seizures were made incidental thereto are all questions of fact. Whether the arresting officers had reasonable grounds to believe the persons arrested were guilty of the commission of a felony are questions of fact, for it could not be claimed that the officers saw conspiracy being committed (Go-Bart v. U. S., 282 U. S. 344, 357). Whether there was a likelihood of the persons escaping before warrants could be obtained for their arrests is a question of fact. Whether the securing of search warrants was reasonably practicable is a question of fact. See Carroll v. U. S., 267 U. S. 132, 156; Walker v. U. S., 5th Circuit, 125 Fed. (2d) 395. Whether the detention of the plaintiffs was reasonable or amounted to false imprisonment is a question of fact. If the searches and seizures were incidental to the arrests, [13] whether they were reasonable or were exploratory are questions of fact. Whether the plaintiffs were held incommunicado is a question of fact. Each case has to be decided on its own facts and circumstances in determining reasonableness. Go-Bart Importing Company v. U. S., 282 U. S. 344, 357; Papani v. U. S., 9th Circuit, 84 Fed. (2) 160, 161.

In the government's reply memorandum on the motion to dismiss it is contended that at least some

of the questions of fact raised are res judicata because of Judge Yankwich's decision on the motions to suppress evidence and to return articles seized in the case of U. S. v. Bell, No. 15759. See the opinion in that case, 48 Fed. Supp. 986.

By omission under Rule 12 (b) of the Federal Rules of Civil Procedure and inclusion under Rule 8 (c) thereof, the defense of res judicata may not be raised by a motion to dismiss (unless the facts clearly appear from the complaint) but must be set forth in the Answer. Eberle v. Sinclair Prairie Oil Co., District Court of Oklahoma, 3 Federal Rules Service, page 111, 35 Fed. Supp. 296, affirmed 120 Fed. (2d) 746 (10th Circuit); Consolidated Freightways, Inc. v. Railroad Commission of California, 4 Federal Rules Service, page 87, 36 Fed. Supp. 269 (a three-judge case, with Judges Wilbur, St. Sure and Roche sitting); Jones v. Miller, Western District of Pennsylvania, 6 Federal Rules Service, page 110.

It probably will not be necessary to say anything about permitting amendment in this case. I have attempted [14] to inform counsel of my views on the matter.

Rule 15 (a) of the FRCP provides:

> "A party may amend his pleading once as a matter of course at any time before a responsive pleading is served * * *."

In United States v. Newbury Mfg. Co., 1st Circuit, November 21, 1941, 5 Federal Rules Service, 15a, 24, page 235, 123 Fed. (2d) 453, the court said (at page 236):

"Apparently a motion to dismiss is not a 'responsive pleading' within the meaning of the rule (referring to Rule 15 (a). Cf. Rules 7a and 12b. Therefore, by a literal reading of Rule 15a it might be argued that a plaintiff would be entitled as of right to one amendment of his complaint, without any limit of time, despite the filing of a motion to dismiss. However, it could hardly have been intended that a plaintiff should have the right to amend without limit of time after a judgment of dismissal had been entered; nor could it have been intended that the trial court should have discretionary power for an unlimited time after such judgment of dismissal to vacate the judgment and allow an amendment of the complaint. Such a construction of Rule 15a would be out of harmony with Rule 59b which narrowly limits the period within which a motion for new trial can be made after the entry of [15] judgment."

Rule 7(a) of the Federal Rules of Civil Procedure provides:

"There shall be a complaint and an answer; and there shall be a reply, if the answer contains a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if leave is given under Rule 14 to summon a person who was not an original party; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be

allowed, except that the court may order a reply to an answer or a third-party answer."

Rule 12 (b) of the Federal Rules of Civil Procedure provides:

"Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counter-claim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: * * *"

The action is dismissed.

[Endorsed]: Filed May 29, 1944. [16]

[Endorsed]: No. 10790. United States Circuit Court of Appeals for the Ninth Circuit. Arthur L. Bell, individually, and as an Associate of and Division Superintendent of "Mankind United", a Voluntary Association, for and in behalf of said "Mankind United" and The Associates thereof; Maude Askew, Eugene Wadsworth Brown, J. Fred Burkey, Lawrence Cook, A. Ray Elsea, Jacob Gloeckler, Bay Burns Sharp, Shanna Jakeman, Pauline Kelso, Max Theodore Miller and Homer G. Wilcox, Appellants, vs. R. B. Hood, Theodore Cruise, Philip Bowser, George M. Langdon, William Gieson, Eugene Greer, J. H. Angell, J. Secrist, John Roche, Malcom C. Powrie, Cecil C. Humphreys, A. F. Scheimerhorn, William Branigan, John Doe Wolfe, Don C. Swanson, Carl B. Sherman, Earl K. Adams, Howard H. Davis, Robert T. Pugh, Edward A. Furbush, O. Wilson Farrell, Dennis G. Smith, Herbert J. Nubish, Robert O'Keefe, Earl P. Staten, Robert Montgomery, Newell Williams, Richard Doe Devine, Richard Doe Bullfrass, John C. Norris, Walt Butler, Mike Cassidy, Paul J. O'Farrell, John W. Schaller, Louis D. Wine, Merle Armstrong, John Philip Manton and Francis John Good, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed June 5, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10790

ARTHUR L. BELL, et al,

Appellants,

vs.

R. B. HOOD, et al.

Appellees.

APPELLANTS' STATEMENT OF POINTS TO BE RELIED UPON ON APPEAL

The appellants hereby designate the following points and grounds of appeal:

1. The judgment of the District Court dismissing the complaint for want of jurisdiction abridges the appellants' right to freedom from unreasonable searches and seizures in violation of the Fourth Amendment to the Constitution of the United States.

2. The judgment of the District Court dismissing the complaint for want of jurisdiction is erroneous in that said District Court had jurisdiction over the persons of the appellees and the subject matter of the complaint.

LORRIN ANDREWS
A. L. WIRIN
By A. L. WIRIN
Attorneys for Appellants

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF RECORD FOR PRINTING

The appellants designate for printing the entire record as certified to this Court by the Clerk of the District Court.

LORRIN ANDREWS
A. L. WIRIN
By A. L. WIRIN
Attorneys for Appellants

(Affidavit of Service by Mail.)

[Endorsed]: Filed June 5, 1944. Paul P. O'Brien, Clerk.

No. 10790

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

ARTHUR L. BELL, individually and as an Associate of and Division Superintendent of "Mankind United", a Voluntary Association, for and in behalf of said "Mankind United" and The Associates thereof; Maude Askew, Eugene Wadsworth Brown, J. Fred Burkey, Lawrence Cook, A. Ray Elsea, Jacob Gloeckler, Bay Burns Sharp, Shanna Jakeman, Pauline Kelso, Max Theodore Miller and Homer G. Wilcox,

Appellants,

vs.

R. B. HOOD, THEODORE CRUISE, PHILIP BOWSER, GEORGE M. LANGDON, WILLIAM GIESON, EUGENE GREER, J. H. ANGELL, J. SECRIST, JOHN ROCHE, MALCOM C. POWRIE, CECIL C. HUMPHREYS, A. F. SCHEIMERHORN, WILLIAM BRANIGAN, JOHN DOE WOLFE, DON C. SWANSON, CARL B. SHERMAN, EARL K. ADAMS, HOWARD H. DAVIS, ROBERT T. PUGH, EDWARD A. FURBUSH, O. WILSON FARRELL, DENNIS G. SMITH, HERBERT J. NUBLISH, ROBERT O'KEEFE, EARL P. STATEN, ROBERT MONTGOMERY, NEWELL WILLIAMS, RICHARD DOE DEVINE, RICHARD DOE BULLFRASS, JOHN C. NORRIS, WALT BUTLER, MIKE CASSIDY, PAUL J. O'FARRELL, JOHN W. SCHALLER, LOUIS D. WINE, MERLE ARMSTRONG, JOHN PHILIP MANTON and FRANCIS JOHN GOOD,

Appellees.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Thursday, March 22, 1945.

Before: Mathews, Stephens and Bone,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. A. L. Wirin, counsel for appellants, and by Mr. Ronald Walker, Assistant United States Attorney, counsel for appellees, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, April 30, 1945.

Before: Mathews and Bone,
Circuit Judges.

[Title of Cause.]

ORDER SUBMITTING MOTION TO REVERSE JUDGMENT OF DISTRICT COURT AND REMAND CAUSE, ETC.

Ordered motion of appellants to reverse judgment of the District Court and remand cause to grant leave to appellants to file amended complaint argued by Mr. A. L. Wirin, counsel for appellants, in support of such motion, and by Mr. Ronald Walker, Assistant United States Attorney, counsel for appellees, and submitted, on oral stipulation of said counsel, to Mathews, Stephens and Bone, Circuit Judges, for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Thursday, June 7, 1945.

Before: Mathews, Stephens and Bone,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

By direction of the Court, Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

Before: Mathews, Stephens and Bone,
Circuit Judges.

Stephens, Circuit Judge.

OPINION

The district court ruled that it was without criminal jurisdiction of the subject matter and dismissed the complaint. Plaintiffs below appeal. For

convenience we shall refer to appellees as defendants.

The complaint filed in the district court sounds in tort; the damages prayed for far exceed the jurisdiction requirement as to value in controversy; there is no diversity of citizenship. It follows that the district court was right unless original jurisdiction of the case is conferred by § 41, Title 28 U.S.C.A. (§ 24 of the Judicial Code), as amended, the applicable part of which reads: "The district court shall have original jurisdiction as follows: (1) * * * [when the case] (a) arises under the Constitution or laws of the United States. * * *."

Appellants contend that their right of action arises under the Fourth and Fifth Amendments to the federal Constitution, which we quote in the margin.[1]

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[1] The Fourth Amendment: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private

It is set out in the complaint that defendants, through the medium of unlawful and unreasonable searches and seizures, have violated the Fourth Amendment to the personal injury of the several plaintiffs and that such defendants have invaded plaintiffs' immunities as provided by the Fifth Amendment to the effect that no person "* * * shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; * * *." It is therefore alleged and argued by the plaintiffs that they have a right to recover personal judgments in the federal district court against the defendants involved for injuries sustained.

It is alleged in the complaint that Arthur L. Bell, one of the plaintiffs and appellants, is an "Associate of and Division Superintendent of Mankind United, a Voluntary Association," and brings the action in behalf of the organization and of the Associates thereof. Whether or not Bell can legally, or whether or not he has the right or power to, maintain the action on behalf of such persons or on behalf of such association, we do not consider.

The defendants are not sued in the capacity of officers but it is alleged in the complaint that they were, with one exception, Federal Bureau of Investigation officers.

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property be taken for public use, without just compensation."

For an historical account of search and seizure and Fourth and Fifth Amendments see Boyd v. United States, 116 U.S. 616 (1886).

It appears that one Merle Armstrong, one of the defendants below, is a Los Angeles policeman and that he was not an acting federal officer at any of the time or during any of the events with which this action is concerned. Counsel stated in the oral argument in this court that they do not press any of their points as to Armstrong, and we shall therefore proceed in our reasoning without regard to him.

At the time of the alleged invasion of plaintiffs' rights each plaintiff stood indicted as of December 18, 1942, by a federal grand jury of violating § 34, Title 50 U.S.C.A. No trial had been held.

It is alleged that the defendants, on the day the indictment was returned, "unlawfully conspired with each other to act beyond their authority as said Federal Bureau of Investigation agents and police officer respectively, and agreed that they would abridge the Constitutional rights of the plaintiffs as guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States to be free from the deprivation of liberty and property without due process of law, and to be free from unreasonable searches and seizures, and agreed, unlawfully to simultaneously, in the early morning of December 18th, 1942, search the homes of the individual plaintiffs herein without any warrants of search or seizure, and unlawfully to seize the papers, documents and effects of said plaintiffs and of 'Mankind United', and falsely to imprison the individual plaintiffs by unlawfully arresting some of the individual plaintiffs without a warrant

of arrest and unreasonably to delay the taking of all of the individual plaintiffs before a committing officer, in order to effectuate the unlawful searches and seizures aforesaid.

"That thereafter, and on the 18th day of December, 1942, as will appear more particularly hereinafter, the defendants and each of them, in order to carry out the terms and conditions of the illegal conspiracy aforesaid, and solely for the purpose of carrying out said terms and conditions, did arrest and imprison the individual plaintiffs herein, and did search the homes of said plaintiffs, and seize and carry away books, papers and effects of said individual plaintiffs and of said 'Mankind United.'"

It is alleged that as to plaintiff Bell the following occurred. Defendants Cruise, Bowser, Lamdon, Gleson, Greer, and two named fictitiously broke doors of his residence, entered, and arrested Bell. The defendants had no search warrant or warrant of arrest. They searched the entire premises leaving them in confusion and disorder. They took Bell and held him for several hours away from the premises and did not take him before a magistrate. They took thousands of documents, papers, and records belonging to "Mankind United", which were entrusted to Bell and took $8,500.00 in money. They took property belonging to Bell and his wife including safe deposit boxes. During a considerable period Bell was held incommunicado and not allowed to see his attorney who was just outside the door, and he was questioned. The allegations are to

the effect that at about the same time all the other plaintiffs were subjected to substantially the same illegal treatment, though in detail varying, by one or more of the defendants.

It is apparent that each plaintiff personally seeks compensatory damages for alleged illegal arrest, false imprisonment, the forceable removal of his person from one place to another, the searching of his premises illegally and unreasonably, the seizing of property belonging to him and others, and the questioning without affording him the aid of advice of an attorney.

There can be no question but that the complaint states strong cases, and if the allegations have any foundation in truth, the plaintiffs' legal rights have been ruthlessly violated. The question of whether or not actions for the recovery of personal judgments for damages against the defendants individually can be maintained in federal court under the allegations hereinbefore briefly set out was directly before the trial court, and it very properly noticed the question sua sponte, and answered it in the negative.

It will be helpful at this juncture briefly to comment upon the genesis of the Fourth and Fifth constitutional Amendments.[2] The theory of our federal Constitution is that each state is sovereign with absolute sovereign powers unlimited except by those powers which have been granted to the federal gov-

[2] For statement that these amendments are limitations upon government action and no more, see Burdeau v. McDowell, 256 U. S. 465, 472, 475 (1921).

ernment. No right or any power to curtail any right mentioned in either the Fourth or Fifth Amendments was ever surrendered or was ever granted to the United States Government by the states or by the people. However, fearing that the exercise of the power actually granted to the central government of the union might tend to whittle away the civil rights of the people, the people affirmatively asserted some of such rights in the text of the national charter itself. In stating them, the people did so by directly denying to the federal government the power to infringe upon such rights.

Nowhere in this case is there a suggestion that anyone questions the existence of or a complete understanding of these rights. (We use the word "rights" throughout this opinion as including immunities mentioned in the constitutional articles here under consideration.) The allegations of the complaint are that the defendants conspired to do what they recognized as beyond their authority. Therefore, there is no question of construction concerning any constitutional or other United States law.

Chief Justice Marshall declared in Cohens v. Virginia, 19 U.S. 264, 378 (1821): "A case in law or equity consists of the right of the one party, as well as of the other, and may truly be said to arise under the constitution or law of the United States, whenever its correct decision depends on the construction of either." In Osborn v. Bank of the United States, 22 U.S. 737, 821 (1824), he commented: "If it be a sufficient foundation for juris-

diction, that the title or right set up by the party, may be defeated by one construction of the constitution or law of the United States, and sustained by the opposite construction, provided the facts necessary to support the action be made out, then all the other questions must be decided as incidental to this, which gives that jurisdiction."

The trial court thought Taylor v. DeHart, 22 Fed. 2d 206 (DC Mo., 1926), which presents essentially the same question as here, was correctly decided. Cornelius in his work on Search and Seizure (2d ed.), p. 958, § 491, states the rule as follows: "Where an illegal search has been made by federal officers in violation of the rights of the plaintiff under the Fourth and Fifth Amendments, no action will lie in the federal court unless there is a diversity of citizenship between the parties or the circumstances are such that a federal court would have otherwise had jurisdiction, in other actions between such parties. The fact that a right of action arises under the Constitution of the United States because of the violation of a constitutional right, does not involve a controversy of such a nature as to give jurisdiction to the federal court under its judicial code, Section 24." See Dobie, "Federal Jurisdiction and Procedure" (1928), p. 164, § 69.

The Supreme Court in Gully v. First National Bank, 299 U.S. 109 (1936), treats the question as to when a cause arises under the Constitution or laws of the United States, and the opinion (by Mr. Justice Cardozo) is consistent with the quotation from Cornelius, supra. See Marshall v. Desert Properties

Co., 103 Fed. 2d 551, 552 (CCA 9, 1939); Viles v. Symes, 129 Fed. 2d 828 (CCA 10, 1942). We comment on the Gully case in the margin.[3] The recent

[3] In Chaskin v. Thompson, 143 Fed. 2d 566, 569 (CCA 9, 1944), appears the following paragraph: "In Gully v. First National Bank, 299 U.S. 109, the court was considering a case which was begun in state court and removed to federal court upon motion of respondent (defendant) upon the ground that it arose under the Constitution or laws of the United States (Jud. Code § 28, 28 U.S.C.A. § 71 Cf. Jud. Code § 24(1)(a), 28 U.S.C.A. § 41). The motion was granted, and federal trial court subsequently denied remand. The action was for unpaid state taxes on national bank shares. The circuit court of appeals sustained the federal jurisdiction. 299 U.S. at page 112, 'upon the ground that the power [of the state] to lay a tax upon the shares of national banks has its origin and measure in the provisions of a federal statute [citation], and that by necessary implication a plaintiff counts upon the statute in suing for the tax.' The Supreme Court then discusses the question 'how and when a case arises "under the Constitution or laws of the United States"' and, referring directly to the case before it, says, 299 U.S. at page 115, 'The obligation of the contract [the tax levy] being a creation of the state, the question remains whether the plaintiff counts upon a federal right in support of his claim that the contract has been broken. The performance owing by the defendant was payment of the valid debts, and taxes are not valid debts unless lawfully imposed. From this defendant argues that a federal controversy exists, the tax being laid upon a national bank or upon the shareholders, therein, and for that reason being void unless permitted by the federal law. * * * That there is a federal law permitting such taxation does not change the basis of the suit, which is still the statute of the state, though the federal law is evidence to prove the statute valid.' And again on page 117 of

case of Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U.S. 210, 213 (1944), is not, as appellants argue, favorable to their views. The court therein plainly states, as the basis for holding the case properly laid in federal court, that it concerns "commerce." In the words of the court, "The case is therefore one arising under a law regulating commerce of which the federal courts are given jurisdiction by 28 U.S.C. §41(8), Judicial Code, § 24 (8)."

It will be noticed that Congress has enacted no law under the authority of the constitutional provision relied upon by plaintiffs as the jurisdictional basis giving United States Courts jurisdiction over torts in general. It has enacted laws granting such jurisdiction as to public officials who have given official bonds and in certain other instances as in the case of Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, supra.

It appears by the allegations in the complaint that the defendants, with the single exception of Armstrong, are federal peace officers, but that they

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299 U.S., the court says: "* * * The most one can say is that a question of federal law is lurking in the background, just as farther in the background there lurks a question of constitutional law, the question of state power in our federal form of government. A dispute so doubtful and conjectural, so far removed from plain necessity, is unavailing to extinguish the jurisdiction of the states."

Inconsistent reasoning will be encountered in the cases, and the student of the question should not allow cases concerning illegally procured evidence to confuse his study.

conspired to go beyond the scope of their authority as such. It would seem that an effort was made to distinguish the action as one against the defendants in their individual capacity and not as officers. There might be cases in which this distinction is important, but we think it is of no importance in the instant case.

Appellants allege that appellees base their actions upon §§ 300-302, Title 5 U.S.C.A. But this allegation avails them nothing as jurisdiction is not affected by allegations of probable defenses. Gully v. First National Bank, supra.

We are of the opinion and so hold that the trial court did not err in holding that the action does not arise under the Constitution or laws of the United States in the sense the Congress used that expression in § 41 of Title 28 U.S.C.A. (§ 24 Jud. Code) and that it did not err in dismissing the complaint.[1]

Appellants' motion to remand submitted April 30, 1945, is denied.

Affirmed.

[Endorsed]: Opinion. Filed June 7, 1945. Paul P. O'Brien, Clerk.

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[1] Interesting upon the general subject of Federal court jurisdiction in Civil Rights cases are the following: Civil Rights Cases, 109 U.S. 3; Nashville v. Browning, 310 U.S. 362-369; Gould v. United States, 255 U.S. 298; Ex Parte Royall, 117 U.S. 241-251; United States v. Classic, 313 U.S. 299; Screws v. United States, U.S. , decided May 7, 1945.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10790

ARTHUR L. BELL, etc., et al.,

Appellants,

vs.

R. B. HOOD, et al.,

Appellees.

JUDGMENT

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and upon motion of appellant to remand cause and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the motion to remand be, and hereby is denied and that the judgment of the said District Court in this cause be, and hereby is affirmed, with costs in favor of the appellees and against the appellants.

It Is Further Ordered and Adjudged by this Court that the appellees recover against the appellants for their costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered June 7, 1915. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred seventy-nine (179) pages, numbered from and including 1 to and including 179, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 25th day of June, 1945.

[Seal] PAUL P. O'BRIEN,
Clerk.

[fols. 181-184]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

[Title omitted]

NOTICE OF MOTION TO REVERSE JUDGMENT, WITH INSTRUCTIONS FROM THIS COURT TO THE DISTRICT COURT TO GRANT LEAVE TO THE APPELLANTS TO FILE AMENDED COMPLAINT.

To Charles H. Carr, United States Attorney, and Ronald Walker, Assistant United States Attorney, Attorneys for Appellees:

You and each of you will please take notice that the appellants will move the court for an order reversing the judgment of the District Court, and instructing said District Court to grant leave to appellants to file an amended complaint, in the court room of said Court, in the Post Office and Federal Building at San Francisco, California [fol. 185] on the 30th day of April, 1945, at 10 A. M., or as soon thereafter as counsel may be heard.

The appellants will rely upon the files and records of the clerk of this court in the above-entitled appeal, upon the attched Memorandum of Points and Authorities, and upon the Proposed Amended Complaint For Damages For False Imprisonment And Unlawful Search And Seizure by Federal Officers.

Lorrin Andrews, A. L. Wirin, by A. L. Wirin, Attorneys for Appellants.

[fol. 186] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

[Title omitted]

MOTION

The appellants move the court for an order reversing the judgment of the District Court for the Southern District of California in the above-entitled matter with instruc-

tions to said District Court to grant the appellants leave of court to file an Amended Complaint.

Lorrin Andrews, A. L. Wirin, by A. L. Wirin, Attorneys for Appellants.

[fol. 187] In the United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted]

Memorandum of Points and Authorities in Support of Motion to Reverse Judgment

Preliminary Statement

There has been lodged with the clerk of this Court an original verified "Proposed Amended Complaint for Damages for False Imprisonment and Unlawful Search and Seizure by Federal Officers." For the convenience of the judges of the court, its text has been printed and appears as Appendix "A," *infra*.

The Proposed Amended Complaint is substantially identical to the original Complaint herein [R. 2-30], in so far as the recital of facts in it is concerned, particularly with respect to the facts of the searches and seizures, and the detention of the plaintiffs. [Paragraph XI of the original Complaint, R. 10; Paragraph VIII of Proposed Amended Complaint, p. 17, *infra*.]

[fol. 188] Omitted from the Proposed Amended Complaint have been all recitals of conspiracy appearing in the original complaint.

Paragraph I of the original complaint [R. 3], has been redrafted so that the jurisdictional recitals in the Proposed Amended Complaint are more specific and detailed. [Cf. Paragraph I of Complaint, R. 3, with Paragraph I of Proposed Amended Complaint, *infra*, p. 12.]

Omitted, too, from the Proposed Amended Complaint, as a party defendant, is Merle Armstrong, a city police officer, so that all of the defendants in the Amended Complaint, as proposed, are Federal Officers, to wit: special agents of the Federal Bureau of Investigation.

The allegations of the Complaint are summarized in our opening brief, pp. 4-8, and are not repeated here. They

are also accurately outlined by the District Court below, in its oral opinion [R. 147-51].

I

The Proposed Amended Complaint Discloses That the United States District Court Has Jurisdiction in the Premises.

More particularly, the "Proposed Amended Complaint" shows in that it is a suit of a civil nature arising under the Constitution and the laws of the United States, in the following respects:

The construction or effect of the following constitutional and statutory provisions is in issue:

A. Constitutional Provisions

1. Whether or not the searches and seizures by the defendants were unreasonable, in violation of the 4th Amendment.

[fol. 189] 2. Whether or not the imprisonment of the plaintiffs by the defendants deprived the plaintiffs of liberty without due process of law, in violation of the 5th Amendment.

B. Statutory Provisions

1. Whether or not either, or both, the searches and seizures by the defendants, and the imprisonment of the plaintiffs by the defendants, violated the rights of the plaintiffs conferred upon them by Title 5, U. S. Code, Sections 300 and 300a, by violating the limitations of power imposed upon said defendants by said laws.

It may be said that under Sections 300 and 300a of Title 5, U. S. Code there arises a right in the plaintiffs not to have their homes searched, without search warrants (cf., particularly Section 300a); and the right not to be deprived of their liberty, so far as arrests without warrants by F. B. I. agents are concerned, except only "where there is a likelihood of the person escaping before a warrant can be obtained for his arrest," and then only where "the person arrested shall be immediately taken before a committing officer."

(The text of this Section, from which the above is quoted, is set forth in Appendix "A," p. 2, to the "Appellants' Opening Brief.")

It may be said also that the construction or effect of Sections 390 and 390a is in issue, in that if the courts give one construction or effect to the limitation of authority conferred upon the defendants by these laws, the appellants will be entitled to prevail; and if the courts give to these sections a different construction or effect, the appellants' cause will be defeated.

[fol. 190] Furthermore, the Proposed Amended Complaint (paragraph I) alleges affirmatively and expressly that the defendants "abused their power and authority as said federal officers, and as said agents of the Federal Bureau of Investigation," *infra*, p. 12.

It is true that the 4th and 5th Amendments, as all of the first ten amendments, are limitations only upon action by the Federal Government. Indeed, they are express guarantees of rights which the Federal Government through its officers may not violate. It does *not* follow, however, that where the rights of a citizen are violated by government officers, *acting in excess of their authority as such*, that the aggrieved citizen has no redress in the federal courts. If this were so, then no suit would ever lie in the federal courts in behalf of the citizen for the vindication of his rights under the Bill of Rights; for if the action of the federal officer is within the scope of his authority, then no suit will lie because the United States may not be sued. Therefore, it is only when federal government officers act in excess of their authority, *i. e.*, where there is an "abuse of power," that a proceeding either by way of injunction or for damages is available in the federal courts. Indeed, it is only in such instances that the citizen desires access to the federal courts. For when government officials act *within* their authority, he has no occasion to sue in the federal courts, or at all.

The phrase "abuse of power" and the principle we have just discussed is considered most adequately by Chief Justice Hughes in *Philadelphia Company v. Stimpson*, 223 U. S. 605, 619. The *Stimpson* case is discussed in our "Appellants' Opening Brief," herein, at page 19. The cases cited in our opening brief at page 14 are considered more fully at pages 16-23 of that brief.

[fol. 191] Of course, it can make no difference whether the suit against a public officer for "abuse of power" is for damages resulting from an abuse committed, or for an injunction to restrain an abuse threatened; for Title 28

U. S. C. A. Sec. 41(1) confers jurisdiction upon the United States District Courts

> "where the matter in controversy * * * arises under the Constitution or laws of the United States * * * of *all* suits of a civil nature at *common law or equity.*" (Italics ours.)

Cf. Mitchell v. Harmony, 13 How. 115, discussed in our opening brief at page 21, as well as the other cases cited at page 14.

II

In Its Discretion, and in the Interests of Justice, This Court May Reverse a Judgment for the Sole Purpose of Remanding It to Permit an Amendment to a Complaint.

Puget Sound Navigation Co. v. Lavendar (9th C. C. A.), 156 Fed. 361.

Cf. the remarks of Judge Taft in *Rondot v. Township of Rogers*, 79 Fed. 677.

Fidelity and Guaranty Fire Corporation v. Bilquist, (9th C. C. A.), 99 F. (2d) 333, on p. 336.

Respectfully submitted, Lorrin Andrews, A. L. Wirin, by A. L. Wirin, Attorneys for Appellants.

[fol. 192] APPENDIX "A"

In the District Court of the United States in and for the Southern District of California, Central Division.

Arthur L. Bell, Individually, and as an Associate of and Division Superintendent of "Mankind United," a Voluntary Association, for and in behalf of said "Mankind United" and The Associates thereof; Maude Askew, Eugene Wadsworth Brown, J. Fred Burkey, Lawrence Cook, A. Ray Elsea, Jacob Gloeckler, Bay Burns Sharp, Shanna Jakeman, Pauline Kelso, Max Theodore Miller and Homer G. Wilcox, Plaintiffs, vs. R. B. Hood, Theodore Cruise, Philip Bowser, George M. Langdon, William Gleson, Eugene Greer, J. H. Angell, J. Secrist, John Roche, Malcom C. Powrie, Cecil C. Humphreys, A. F. Scheinerhorn, William Branigan, John Doe Wolfe, Don C. Swanson, Cecil B. Sherman, Earl K. Adams, Howard H. Davis, Robert

T. Pugh, Edward A. Furbush, O. Wilson Farrell, Dennis G. Smith, Herbert J. Nubish, Robert O'Keefe, Earl P. Staten, Robert Montgomery, Newell Williams, Richard Doe Devine, Richard Doe Bullfrass, John C. Norris, Walt Butler, Mike Cassidy, Paul J. O'Farrell, John W. Schaller, Louis D. Wine, John Philip Manion, Francis John Good, One Doe, Two Doe, Three Doe, Four Doe, Five Doe, Six Doe, Seven Doe, Eight Doe, Nine Doe and Ten Doe, Defendants. No. 2850 RJ Civil.

Proposed Amended Complaint for Damages for False Imprisonment and Unlawful Search and Seizure by Federal Officers.

Come now the plaintiffs and complain against the defendants and each of them and allege:

[fol. 193] I

Jurisdiction of this Court is founded upon a Federal question arising under the Fourth and Fifth Amendments to the Constitution of the United States; and Title 5, U. S. Code; Sections 300 and 300a, as more fully appears hereinafter. The matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars ($3,000.00). Jurisdiction of this Court is founded upon the Federal question involving the rights of the individual plaintiffs and each of them to be free from deprivation of liberty without due process of law by false and unlawful imprisonment in violation of the 5th Amendment to the Constitution; and the rights of all of the plaintiffs to be free from unreasonable searches and seizures, in violation of the 4th Amendment. All of the defendants at all times herein were and are officers of the Federal Government, to wit, Special Agents of the Federal Bureau of Investigation, U. S. Department of Justice, and claim to have acted under and by virtue of the provisions of, and under the authority of Section 300 and 300a of Title 5, U. S. Code aforesaid, and as said federal officers, and, within the scope of their authority as said federal officers, and solely because of said authority, and as said officers.

Said defendants and each of them, however, abused their power and authority as said federal officers, and as said agents of the Federal Bureau of Investigation, as will appear more particularly hereinafter.

The District Court of the United States for the Southern District of California has jurisdiction in the premises, more particularly, in that it is a suit of a civil nature arising under the Constitution and the laws of the United States, in the following respects:

[fol. 194] The construction or effect of the following constitutional and statutory provisions is in issue:

A. Constitutional Provisions

1. Whether or not the searches and seizures by the defendants hereinbelow complained of were unreasonable, in violation of the 4th Amendment.

2. Whether or not the imprisonment of the plaintiffs by the defendants to be hereinbelow set forth, deprived the plaintiffs of liberty without due process of law, in violation of the 5th Amendment.

B. Statutory Provisions

1. Whether or not either or both the searches and seizures by the defendants, and the imprisonment of the plaintiffs by the defendants, violated the rights of the plaintiffs conferred upon them by Title 5, U. S. Code, Sections 300 and 300a, by violating the limitations of power imposed upon said defendants by said laws.

II

All the individual plaintiffs aforesaid are, and at all times herein have been, citizens of the United States.

III

The plaintiff, Arthur L. Bell, is and for over eight years has been a resident of the City and County of San Francisco, in the State of California, and has at all times herein been the Division Superintendent for the Pacific Coast Division of "Mankind United."

IV

"Mankind United" is, and for the last eight years has been, a voluntary association consisting of a varying num-
[fol. 195] ber of persons, and consists now in the State of California of a large number of persons, all of whom are

citizens of the United States and residents of the State of California.

Said "Mankind United," a voluntary association, was organized and exists for the following purposes, to-wit: To eliminate illiteracy, poverty and war; to establish world-wide economic equality, based on the principles promulgated by Christ Jesus, including particularly the Golden Rule of Brotherly Love.

Said plaintiff Arthur L. Bell files this suit herein both for himself individually and as an associate and as Division Superintendent of said "Mankind United" for and in behalf of himself as said associate and Division Superintendent, and for and in behalf of all of the associates of said "Mankind United"; the persons constituting said voluntary association being so numerous as to make it impracticable to bring them all before the Court as parties plaintiff herein, and the appearance of the plaintiff, Arthur L. Bell, herein in their behalf, and the representation by the plaintiff Arthur L. Bell of said class will insure the adequate representation of all of said associates, and the character of the rights sought to be enforced in behalf of said class is joint and/or common as will appear more particularly hereinafter.

In addition all of the plaintiffs herein assert a right to relief both jointly and severally in respect to, and arising out of, the same transaction, occurrence or series of transactions or occurrences, and questions both of law and of fact are common to all of the plaintiffs; with respect to all of the defendants joined in the within action, the plaintiffs assert against them both jointly and severally a right to relief in respect to, and arising out of, the same [fol. 196] transaction, occurrence or series of transactions or occurrences; and questions of law and of fact common to all of the defendants will arise in said action.

V

Plaintiff, Maude Askew, resides in the City of San Diego, State of California, and has resided therein for more than six years last past, and that she is a co-worker of "Mankind United";

Plaintiff, Eugene Wadsworth Brown, resides in the City of Los Angeles, State of California, and has resided therein for more than six years last past, and that he is a co-worker and a Bureau Manager of "Mankind United";

Plaintiff, J. Fred Burkey, resides in the City of Oakland, State of California, and has resided therein for more than six years last past, and that he is a co-worker and a Bureau Manager of "Mankind United";

Plaintiff, Lawrence Cook, resides in the City of San Diego, State of California and has resided therein for more than six years last past, and that he is a co-worker of "Mankind United";

Plaintiff, A. Ray Elsea, resides in the City of Los Angeles, State of California, and that he is a co-worker and a Bureau Manager of "Mankind United";

Plaintiff Jacob Gloeckler resides in the city of Dequair, State of California, and has resided therein for more than six years last past, and that he is a co-worker of "Mankind United";

Plaintiff Bay Burns Sharp resides in the City of Fresno, State of California, and has resided therein for more than [fol. 197] six years last past, and that he is a co-worker and a Bureau Manager of "Mankind United";

Plaintiff Shanna Jakeman resides in the City of Los Angeles, State of California, and has resided therein for more than six years last past, and that she is a co-worker of "Mankind United";

Plaintiff Pauline Kelso resides in the City of San Diego, State of California, and has resided therein for more than six years last past, and that she is a co-worker of "Mankind United";

Plaintiff Max Theodore Miller resides in the City of Mountain View, State of California, and has resided therein for more than six years last past, and that he is a co-worker and a Bureau Manager of "Mankind United";

Plaintiff Homer G. Wilcox resides in the City of San Diego, State of California, and has resided therein for more than six years last past, and that he is a co-worker and a Bureau Manager of "Mankind United";

VI

All the defendants herein were, and at all times herein have been residents of the State of California; and the defendants R. B. Hood, J. H. Angell, J. Secrist, Robert T. Pugh, Howard H. Davis, Robert O'Keefe, Earl P. Staten and Newell Williams are, and at all times have been, residents of Los Angeles and or San Diego and within the Southern District of California.

VII

On the 17th day of December, 1942, the individual plaintiffs herein were indicted by the Grand Jury for the Southern District of California, charged with a violation of Section 345 Title 50, U. S. Code;

[fol. 198] VIII

All the defendants herein, at all times herein, acted in concert and pursuant to an understanding and agreement so to act, which said agreement and understanding was entered into by all of the defendants on or about December 16 or 17, 1942.

Some of the defendants, pursuant to said understanding and agreement committed the following acts, with respect to each of the plaintiffs, as follows:

(1) Arthur L. Bell:

At about 7:30 o'clock in the morning of the 18th day of December, 1942, the defendants, Theodore Cruise, Philip Bowser, George M. Langdon, William Gleson, Eugene Greer, One Doe and Two Doe, did break open the doors of the residence of plaintiff Arthur L. Bell at San Francisco, California, and entered upon his premises and announced to said plaintiff that he was under arrest. They did not produce an order or warrant of arrest or search and seizure, nor did they have either a warrant of arrest or search warrant. Said defendants proceeded without the consent and against the will of said Arthur L. Bell to search the entire premises in which he lives. After searching the entire premises and leaving the same in great confusion and disorder, said defendants took this plaintiff from the premises but did not bring him before any committing officer until the hour of two o'clock in the afternoon although holding him in custody during all of said time at his residence; and they did take from his premises thousands of documents, papers, records and other property belonging to "Mankind United" and entrusted to the keeping of this plaintiff, as well as many private documents, papers and other personal properties belonging to this plaintiff and his wife; also the [fol. 199] sum of approximately eight thousand five hundred ($8,500.00) dollars in funds of said "Mankind United".

The property taken from said premises, in addition to

the money in question, included personal documents, automobile insurance policies, private papers of this plaintiff's wife, records and documents for two safe-deposit boxes, thousands of receipts for monies expended, letter files and thousands of other papers and documents.

Said defendants, Theodore Cruise, Philip Bowser, George M. Langdon, William Gieson, Eugene Greer, Doe One and Doe Two, remained upon the premises from approximately 8:00 o'clock a.m. the morning to 2:30 o'clock in the afternoon, and removed from this plaintiff's premises twelve large cartons and packages containing "Mankind United" property entrusted to this plaintiff by said "Mankind United" and necessary for the past and present records of the same; the complete contents of said cartons and packages this plaintiff was not informed of at that time, nor since, by said defendants, nor was plaintiff permitted by said defendants to take a list of the same other than the number of cartons removed from the premises.

During the time when he was imprisoned by the defendants in his premises as aforesaid plaintiff, Arthur L. Bell, was not permitted to see his attorney although said attorney was waiting in the hall outside the door, and did so wait for over five hours, said attorney having been refused permission by these defendants to enter said home of the plaintiff; nor was plaintiff allowed to have any counsel although questioned by the said defendants for the purpose of obtaining evidence against him in connection with the indictment above set forth, nor was plaintiff allowed to speak [fol. 200] with, or obtain advice from, any other person, nor to use his telephone, in all to his damage as hereinafter set forth.

(2) Maude Askew:

At about the hour of 7:30 in the morning of the 15th day of December, 1942, the defendants Carl B. Sherman and Earl K. Adams entered the premises of plaintiff Maude Askew, and announced that she was under arrest and stated that they were agents of the Federal Bureau of Investigation; they did not show her a warrant of search and seizure, but imprisoned her upon said premises and stated to her that they did not need a warrant for search and seizure so long as they were making an arrest, and declared that they would assume responsibility for searching said premises and, against the will and without the consent of said

plaintiff, did search and take from said premises a large number of documents, papers and other property belonging to "Mankind United" and entrusted to the keeping of this plaintiff, Maude Askew, as well as many private documents, papers and other personal property belonging to this plaintiff; and said defendants did not take her before a committing magistrate, but did take her to the city jail in the City of San Diego, State of California, and there kept her imprisoned until noon Saturday, without arrangement before any committing magistrate whatsoever, in all to her damage as hereinafter set forth.

(3) Eugene Wadsworth Brown:

At about the hour of 7:30 in the morning of the 18th day of December, 1942, defendants Edward A. Furbush and Three Doe and Four Doe did enter upon the premises of plaintiff Eugene Wadsworth Brown, showing to him [fol. 201] cards of identification as agents of the Federal Bureau of Investigation and stating that this plaintiff was under arrest, producing what they called a "bench warrant" under a secret indictment and showing same to this plaintiff. That said defendants did not produce any warrant of search or seizure, and stated that they had no such warrant, that such a warrant was not necessary as long as they had a warrant for plaintiff's arrest. That said defendants proceeded, against the protest and will of this plaintiff, to search the premises in which he lives. That said defendants then proceeded to seize and take away papers and documents, together with one or more moving picture films, the property of "Mankind United" and entrusted to this plaintiff. That upon their entering the premises of said plaintiff Eugene Wadsworth Brown, defendants kept the same Brown as their prisoner in said premises, did not permit him to leave and illegally detained him for the space of approximately 7½ hours, during which time, and until 3:00 or 3:30 p. m. of said day, they neglected and refused to take this plaintiff before a committing officer and held him as a prisoner and searched his entire premises without permitting him to be present, except for a very short time. When said plaintiff was taken by said defendants to the county jail he was not brought before a committing officer until 4:00 p. m. During all of the time that said plaintiff was in the county jail he was held incommunicado by said defendants or their agents, not allowed to tele-

phone anyone or to see a lawyer. Said defendants ransacked the entire home of this plaintiff. They not only took articles in full view, but opened and searched drawers, shelves and forced one or more locked drawers. After this plaintiff was taken to the county jail, the defendants remained on his premises without right or warrant and, on information and belief, the plaintiff alleges said defendant [fol. 202] continued to make an extensive search thereof, in all to his damage as hereinafter set forth.

(4) J. Fred Burkey:

At about the hour of 7:30 in the morning of the 18th day of December, 1942, defendants Cecil C. Humphreys, A. F. Scheimerhorn and William Branigan, entered the premises of plaintiff J. Fred Burkey, and announced that he, the said Burkey, was under arrest. Said defendants did not exhibit any warrant of arrest, or any warrant for search or seizure of this plaintiff's premises. Against the protests of this plaintiff and without his consent, they proceeded to search the premises in which he lives and took therefrom a large quantity of documents, records and papers belonging to "Mankind United" and entrusted to this plaintiff. Said defendants refused to permit said plaintiff, J. Fred Burkey, to leave his home, and illegally imprisoned him in said premises without taking him before a committing officer for arraignment; for the space of more than five hours said defendants detained this plaintiff in said premises while they searched every room of the same and took therefrom a large number of pamphlets, records and other documents, some belonging to "Mankind United" and in this plaintiff's custody and others belonging to him personally, in all to his damage as hereinafter set forth.

(5) Lawrence Cook:

At about the hour of 7:30 in the morning of the 18th day of December, 1942, defendants, O. Wilson Farrell, Dennis G. Smith and Herbert J. Nubish, forced their way into plaintiff Lawrence Cook's home, and announced that he was under arrest, producing a warrant of arrest. Said [fol. 203] defendants did not produce any warrant for search or seizure. Instead of removing said plaintiff from the premises and arraigning him before a committing officer, against the consent and will of this plaintiff, said defendants searched the entire premises in which he lives, seizing

and carrying away great numbers of books, papers and other articles belonging to "Mankind United" entrusted to this plaintiff's care by said "Mankind United"; also a great many documents, papers and other personal property belonging to this plaintiff, and they forcibly detained said plaintiff upon said premises after he had been placed under arrest for approximately six hours, in all to his damage as hereinafter set forth.

(6) A. Ray Elsea:

At about the hour of 7:30 in the morning of the 18th day of December, 1942, defendants, J. H. Angell, J. Secrist, John Roche and Malcolm C. Powrie, did with force and arms enter the premises of plaintiff A. Ray Elsea, and produced a warrant of arrest. Against this plaintiff's will, and without his consent, said defendants proceeded to search the home in which this plaintiff lives with his wife, and to seize all of his books and papers, indiscriminately helping themselves to papers, documents and effects belonging to this plaintiff as well as those entrusted to him by "Mankind United"; and they carried large bundles away from said premises. Included among the papers taken were all of this plaintiff's wife's records concerning a completion of income tax and sales tax returns which it was necessary for her to immediately prepare and file. Said defendants imprisoned this plaintiff in his home from the hour of approximately 7:00 a. m. until approximately 2:00 p. m. Instead of removing said plaintiff from the premises and arraigning him before a committing officer, said defend-
[fol. 204] ants forcibly detained this plaintiff upon said premises after he had been placed under arrest for approximately seven hours, in all to his damage as hereinafter set forth.

(7) Jacob Gloeckler:

At about the hour of 7:30 in the morning of the 18th day of December, 1942, defendants, John C. Norris, Walt Butler, Mike Cassidy and Paul J. O'Farrell, did enter upon the premises of plaintiff, Jacob Gloeckler, showed this plaintiff cards of identification as agents of the Federal Bureau of Investigation, forced their way into this plaintiff's house and announced that said plaintiff was under arrest. They did not produce any warrant of arrest, nor did they produce any warrant of search and seizure. Said defendants pro-

ceeded, against the consent and will of this plaintiff, to search the premises in which he lived. Said defendants also informed this plaintiff and his wife that they knew their rights, that it was not necessary for them to have either a warrant of arrest or a warrant of search and seizure, and that they were acting under instructions. After searching the entire premises, these defendants seized this plaintiff and took him from the premises together with a great number of documents, papers and records of "Mankind United" entrusted to this plaintiff's care, also a great number of documents and personal property belonging to said plaintiff and his wife. These defendants forced, under threat, this plaintiff and his wife to fill out a questionnaire in the handwriting of the plaintiff and his wife; and to sign the same; and under threat said defendants dictated the answers this plaintiff and his wife were to make to said questionnaire; said defendants took said questionnaire away with them. For approximately four and one-half hours this plaintiff was imprisoned by said defendants upon his premises with-
[fol. 205] out being taken before a committing officer, in all to his damage as hereinafter set forth.

(8) Bay Burns Sharp:

At about the hour of 7:30 in the morning of the 18th day of December, 1942, defendant, Howard H. Davis did enter upon the premises of plaintiff, Bay Burns Sharp, announced that this plaintiff was under arrest and showed him a warrant of arrest, but did not present to this plaintiff any warrant of search and seizure. Said defendant took this plaintiff to the United States Marshal's office in the Federal Building, Fresno, California. This plaintiff has been informed and believes, and therefore alleges that without any further exhibition of warrant of search and seizure, after plaintiff's removal to prison, seven agents of the Federal Bureau of Investigation, including some of the defendants herein, searched his entire premises, took a great number of documents, papers, records and other personal property therefrom, in all to his damage as hereinafter set forth.

(9) Shanna Jakeman:

At about the hour of 7:30 in the morning of the 18th day of December, 1942, defendants, Robert T. Pugh and others, to the plaintiff unknown, forced an entrance upon

the premises of plaintiff Shanna Jakeman. This plaintiff was in bed, being quite ill. Said defendants pushed their way inside and told plaintiff that they had come to arrest her, stating that they were Federal Bureau of Investigation agents. Said defendants did not produce a warrant of arrest, nor a search and seizure warrant, but proceeded to search plaintiff's home. After this plaintiff had dressed [fol. 206] herself to go with them, said defendants required plaintiff to remain in the living room. While in her home said defendants presented to this plaintiff a paper and told her that if she did not sign same, they would get a warrant and it would be hard on her. Under duress, this plaintiff signed said paper. Said defendants remained in this plaintiff's home for about five hours searching same behind closed doors, after searching the living room where plaintiff was compelled to stay. During all of said period of time this plaintiff was imprisoned by said defendants and detained in her home, without being taken before a committing officer. Said defendants seized and took away papers and documents belonging to this plaintiff including her private letters and other personal property; among the articles taken by said defendants were charts, pictures and other matter being personal property in connection with plaintiff's study of "Mankind United." After thoroughly searching the entire premises, said defendants took this plaintiff to an office on Spring Street, being the office of the Federal Bureau of Investigation, where they asked her a great many questions. This plaintiff was kept in said office for approximately one and one-half hours, at which time she became so faint and ill from lack of nourishment that she could no longer answer questions; and said defendants took her to the county jail in the City of Los Angeles without having been first arraigned before any committing officer, in all to her damage as hereinafter set forth.

(10) Pauline Kelso:

At about the hour of 7:30 in the morning of the 18th day of December, 1942, defendants John Doe Wolfe and Don C. Swanson, did enter the premises of plaintiff Pauline Kelso, and announced that plaintiff was under arrest. They, [fol. 207] John Doe Wolfe and Don C. Swanson, against the consent and will of said plaintiff, proceeded to search the premises in which this plaintiff lives. Although plaintiff protested against such search and seizure, said defend-

ants produced no warrant for search and seizure. Having imprisoned her in said premises from 7:30 in the morning until in the afternoon, they took this plaintiff, together with the papers, documents and effects which they had seized, to the San Diego County jail where she was confined without being taken before a committing officer until noon Saturday, in all to her damage as hereinafter set forth.

(11) Max Theodore Miller:

At about the hour of 7:30 o'clock in the morning of the 18th day of December, 1942, defendants, John W. Schaller, Louis D. Wine, Four Dee and Five Doe, did, with a revolver force their entrance into the premises of plaintiff Max Theodore Miller, and announced that this plaintiff was under arrest. Said defendants did not produce any warrant of arrest, nor did they produce any warrant of search and seizure. Said defendants proceeded, without the consent and against the will of this plaintiff, to search the premises on which he lives. Upon the United States Postman delivering a registered letter addressed to this plaintiff, said defendants seized the same, opened it and removed the contents. Said defendants seized and carried away from this plaintiff's premises a great number of documents belonging to "Mankind United" and entrusted to the care of said plaintiff; said defendants also took away documents and other personal property belonging to this plaintiff and his wife, including the sum of one thousand two hundred one and 85/100 ($1,201.85) dollars. The property taken from said premises by said defendants included, in addition [fol. 208] to the money in question, a strong box, together with personal documents, private papers of this plaintiff's wife and all other documents and records which said defendants found in the strong box, including automobile insurance policies. Said defendants searched the private purse of plaintiff's wife, removing and seizing therefrom receipts, including a money order receipt, also a booklet entitled, "The Law and Gospel of Economics." Said defendants remained upon this plaintiff's premises from approximately 7:30 a. m. until 12:30 p. m., during all of which time this plaintiff was held a prisoner by said defendants without being taken before a committing officer for arraignment, in all to the damage of said plaintiff as hereinafter set forth.

(12) Homer G. Wilcox:

At about the hour of 7:30 in the morning of the 18th day of December, 1942, defendants, Robert O'Keefe, Earl P. Staten, Robert Montgomery, Newell Williams and Adam Wolf, did force their way into the premises of plaintiff Homer G. Wilcox, showed this plaintiff cards of identification as agents of the Federal Bureau of Investigation, and announced that plaintiff was under arrest. They produced a warrant of arrest and stated that that permitted them to search anything they wanted to on plaintiff's premises. Said defendants, against the consent and will of this plaintiff, searched his home. Said defendants seized and took away papers and documents, together with moving picture films, stereopticon slides, maps, etc. After such search and seizure these defendants seized this plaintiff and took him, together with all the papers, documents seized, from the premises. During all the time said defendants were carrying on their search and seizure of plaintiff's premises and [fol. 209] property, this plaintiff was held a prisoner in his home without being taken before a committing officer for arraignment, in all to his damage as hereinafter set forth.

IX

The plaintiffs, and all of them, have been for many years residents of the State of California, and were teachers and ministers preaching the Gospel of "Mankind United." They were handling the business affairs of said "Mankind United" in their respective territories. None of them had, prior to the indictment on December 17, 1942, heretofore referred to, been convicted of, or indicted for, any offense. They have no other home or occupation other than as such ministers and teachers within the State of California; and there was no reason or probability or likelihood of any of them leaving the State of California, all of which facts were well known to the defendants who had secretly made careful investigations in connection with all of the actions and doings of said plaintiffs for a long period of time last past.

X

In no instance aforesaid did the defendants, or any of them, have a search warrant to search the premises of any of the plaintiffs, nor had such a search warrant been issued.

XI

In each instance aforesaid where an arrest was made without a warrant of arrest, the defendants had no reasonable or any ground to believe that the plaintiff so arrested was guilty of a felony cognizable under the laws of the United States, nor had a violation of Title 50, Sec. 34, taken [fol. 210] place; nor, as aforesaid, was there any likelihood that any of the individual plaintiffs would escape before a warrant could be obtained for his arrest; nor, as aforesaid, were any of the individual plaintiffs taken immediately or within a reasonable time before a committing officer.

XII

As the result of said actions of the defendants, the plaintiffs have suffered the following damages:

(1) Plaintiff, "Mankind United," has suffered damages in the sum of one hundred thousand ($100,000.00) dollars.

(2) Plaintiff, Arthur L. Bell, individually, by reason of the search of his home and the seizure of his books, papers and effects, has suffered damages in the sum of five thousand ($5,000.00) dollars; by reason of his false imprisonment this plaintiff has suffered damages in the sum of fifty thousand ($50,000.00) dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish and suffering, and injury to his reputation, said plaintiff has suffered damages in the sum of one hundred thousand ($100,000.00) dollars; in all to his damage one hundred fifty-five thousand ($155,000.00) dollars.

(3) Plaintiff, Maude Askew, by reason of the breaking into and entering of her premises by the defendants aforesaid, has suffered damages in the sum of five thousand ($5,000.00) dollars; by reason of her false imprisonment, this plaintiff has suffered damages in the sum of twenty thousand ($20,000.00) dollars; and by reason of the deprivation of her Constitutional rights, mental pain, anguish, suffering and injury to her reputation, plaintiff has suffered damages in the sum of fifty thousand ($50,000.00) dollars; [fol. 211] in all to her damage seventy-five thousand ($75,000.00) dollars.

(4) Plaintiff, Eugene Wadsworth Brown, by reason of the breaking into and entering of his premises by the de-

fendants aforesaid, has suffered damages in the sum of five thousand ($5,000.00) dollars; by reason of his false imprisonment, this plaintiff has suffered damages in the sum of twenty thousand ($20,000.00) dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of fifty thousand ($50,000.00) dollars; in all to his damage seventy-five thousand ($75,000.00) dollars.

(5) Plaintiff, J. Fred Burkey, by reason of the breaking into and entering of his premises by the defendants aforesaid, has suffered damages in the sum of five thousand ($5,000.00) dollars; by reason of his false imprisonment this plaintiff has suffered damages in the sum of twenty thousand ($20,000.00) dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of fifty thousand ($50,000.00) dollars; in all to his damage seventy-five thousand ($75,000.00) dollars.

(6) Plaintiff, Lawrence Cook, by reason of the breaking into and entering of his premises by the defendants aforesaid has suffered damages in the sum of five thousand ($5,000.00) dollars; by reason of his false imprisonment this plaintiff has suffered damages in the sum of twenty thousand ($20,000.00) dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of fifty thousand ($50,000.00) dollars, [fol. 212] in all to his damage seventy-five thousand ($75,000.00) dollars.

(7) Plaintiff, A. Ray Elsea, by reason of the breaking into and entering of his premises by the defendants aforesaid, has suffered damages in the sum of five thousand ($5,000.00) dollars; by reason of his false imprisonment, this plaintiff has suffered damages in the sum of twenty thousand ($20,000.00) dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of fifty thousand ($50,000.00) dollars; in all to his damage seventy-five thousand ($75,000.00) dollars.

(8) Plaintiff, Jacob Gloeckler, by reason of the breaking into and entering of his premises by the defendants aforesaid, has suffered damages in the sum of five thousand ($5,000.00) dollars; by reason of his false imprisonment, this plaintiff has suffered damages in the sum of twenty thousand ($20,000.00) dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of fifty thousand ($50,000.00) dollars; in all to his damage seventy-five thousand ($75,000.00) dollars.

(9) Plaintiff, Bay Burns-Sharp, by reason of the breaking into and entering of his premises by the defendants aforesaid, has suffered damages in the sum of five thousand ($5,000.00) dollars; by reason of his false imprisonment plaintiff has suffered damages in the sum of twenty thousand ($20,000.00) dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of fifty thousand ($50,000.00) [fol. 213] dollars; in all to his damage seventy-five thousand ($75,000.00) dollars.

(10) Plaintiff, Shanna Jakeman, by reason of the breaking into and entering of her premises by the defendants aforesaid, has suffered damages in the sum of five thousand ($5,000.00) dollars; by reason of her false imprisonment, this plaintiff has suffered damages in the sum of twenty thousand ($20,000.00) dollars; and by reason of the deprivation of her Constitutional rights, mental pain, anguish, suffering and injury to her reputation, plaintiff has suffered damages in the sum of fifty thousand ($50,000.00) dollars; in all to her damage seventy-five thousand ($75,000.00) dollars.

(11) Plaintiff, Pauline Kelso, by reason of the breaking into and entering her premises by the defendants aforesaid, has suffered damages in the sum of five thousand ($5,000.00) dollars; by reason of her false imprisonment, this plaintiff has suffered damages in the sum of twenty thousand ($20,000.00) dollars; and by reason of the deprivation of her Constitutional rights, mental pain, anguish, suffering and injury to her reputation, plaintiff has suffered damages in the sum of fifty thousand ($50,-

000.00) dollars; in all to her damage seventy-five thousand ($75,000.00) dollars.

(12) Plaintiff, Max Theodore Miller, by reason of the breaking into and entering of his premises by the defendants aforesaid, has suffered damages in the sum of five thousand ($5,000.00) dollars; by reason of his false imprisonment this plaintiff has suffered damages in the sum [fol. 214] of twenty thousand ($20,000.00) dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of fifty thousand ($50,000.00) dollars; in all to his damage seventy-five thousand ($75,000.00) dollars.

(13) Plaintiff, Homer G. Wilcox, by reason of the breaking into and entering of his premises by the defendants aforesaid, has suffered damages in the sum of five thousand ($5,000.00) dollars; by reason of his false imprisonment, this plaintiff has suffered damages in the sum of twenty thousand ($20,000.00) dollars; and by reason of the deprivation of his Constitutional rights, mental pain, anguish, suffering and injury to his reputation, plaintiff has suffered damages in the sum of fifty thousand ($50,000.00) dollars; in all to his damage seventy-five thousand ($75,000.00) dollars.

Wherefore, plaintiffs pray for judgment against the defendants and each of them as follows:

1. Arthur L. Bell, in behalf of "Mankind United"; one hundred thousand ($100,000.00) dollars;

2. Arthur L. Bell, individually: One hundred fifty-five thousand ($155,000.00) dollars;

3. Maude Askew: Seventy-five thousand ($75,000.00) dollars;

4. Eugene Wadsworth Brown: seventy-five thousand ($75,000.00) dollars;

[fol. 215] 5. J. Fred Burkey: Seventy-five thousand ($75,000.00) dollars;

6. Lawrence Cook: Seventy-five thousand ($75,000.00) dollars;

7. A. Ray Elsea: Seventy-five thousand ($75,000.00) dollars;

8. Jacob Gloeckler: Seventy-five thousand ($75,000.00) dollars;

9. Bay Burns Sharp: Seventy-five thousand ($75,000.00) dollars;

10. Shanna Jakeman: Seventy-five thousand ($75,000.00) dollars;

11. Pauline Kelso: Seventy-five thousand ($75,000.00) dollars;

12. Max Theodore Miller: Seventy-five thousand ($75,000.00) dollars;

13. Homer G. Wilcox: Seventy-five thousand ($75,000.00) dollars;

Wherefore, plaintiffs further pray for such other and further relief as to the court may seem just and proper, and for their costs and disbursements.

A. L. Wirin and J. B. Tietz, Russell E. Parsons, by A. L. Wirin, Attorneys for Plaintiffs.

[fols. 216-217] *Duly sworn to by A. Ray Elsea. Jurat omitted in printing.*

[fols. 218-220] [File endorsement omitted]

[fol. 221] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

[Title omitted]

BRIEF OF APPELLEES IN OPPOSITION OF MOTION TO REVERSE JUDGMENT—Filed April 26, 1945

Preliminary Statement

Appellants seek an order reversing the judgment of the District Court and instructing the District Court to grant leave to appellants to file an amended complaint. The cases cited by appellants in support of their motion (page 9 of appellants' Points and Authorities in support of the motion) are not in point.

Thus in *Fidelity and Guaranty Fire Corp. v. Bilquist*, 99 Fed. (2d) 333, cited by appellants, the amendment of the pleadings was permitted on the theory of reformation under the direct statutory authority of Judicial Code 274 a, 28 U. S. C. A. 397, which provides:

> "In case any United States court shall find that a suit at law should have been brought in equity . . . [fol. 222] the court shall order any amendments to the pleadings which may be necessary to conform them to proper practice. Any party to the suit shall have the right, at any stage of the cause, to amend his pleadings so as to obviate the objection that his suit was not brought on the right side of the court. The cause shall proceed and be determined upon such amended pleadings . . . "

In *Puget Sound Navigation Co. v. Lavendar* (9th C. C. A.) 156 Fed. 361 (1907) a judgment of the District Court in favor of plaintiff was reversed by the Circuit Court for want of jurisdiction because the complaint failed properly to allege diversity of citizenship. The judgment was reversed and remanded to the District Court with *leave to apply for amendment*. It should be emphasized that the term "leave to apply" is permissive and not a direction. It should also be noted that the defect was purely a technical one, an inadvertent omission of a necessary allegation in the complaint.

The jurisdictional deficiency in the original complaint filed by appellants is one going directly to the substance of appellants' cause of action.

Appellants here ask for an order *reversing* the judgment of the District Court. Such a *reversal* would be an express recognition that the *original complaint* states a cause within the jurisdiction of the Federal Courts. The proposal to amend the complaint would, therefore, be unnecessary.

Appellants' right to amend must now be determined under Rule 15a of the Federal Rules of Civil Procedure or under such other of said rules which might afford them relief. These rules are outlined and discussed in our subsequent argument.

[fol. 223] In the instant case the defect in jurisdiction is one of substance and not merely an inadvertent failure to

include a jurisdictional statement. The basis of the lower court's decision and of our argument submitted in the Circuit Court in support of such decision, went to the substance of the complaint upon the same facts realleged in the proposed amended complaint.

I.

No Dispensing Power Exists in the Circuit Court of Appeals to Permit the Relief Sought by Appellants

It is appellees' contention that the power of the Circuit Court is only to review for error the record on appeal from proceedings in the District Court. It is not contended that appellants might not dismiss the pending appeal and apply to the District Court to vacate its judgment and permit an amended complaint to be filed. However, it should be noted that such a motion addressed to the District Court would come within Rule 60(b) of the Federal Rules of Civil Procedure which requires such motion to be made within six months after the judgment was taken. In the instant case far more than six months have run since the entry of the judgment dismissing the action for want of jurisdiction on April 20, 1944 [Tr. pp. 136-138].

A case squarely in point is that of *United States v. Newbury Mfg. Co.*, 123 Fed. (2d) 453, wherein the Circuit Court of Appeals of the First Circuit ruled adversely upon a similar motion. In that case the United States as plaintiff brought three actions for breach of contract. In each case motions of the defendant for dismissal were granted on [fol. 224] the grounds that the complaints failed to state causes of action. The plaintiff did not move in the District Court for leave to amend but filed notices of appeal from the judgments of dismissal in all three cases which were consolidated upon appeal. Within the six months limitation imposed by Rule 60(b) of the Federal Rules of Civil Procedure plaintiff requested the District Judge to ask the Circuit Court to remand the cases so that motions for leave to file amended complaints could be filed in the court below. The District Judge refused to make the request.

After the expiration of the six months period, within which relief might have been sought in the District Court, the plaintiff-appellant moved the Circuit Court to vacate the judgments of dismissal and to remand the cases to

the District Court so that appropriate motions for leave to amend might be made. We quote at length from the decision as it seems to afford a complete answer to the contention of appellants in the present case:

"Before considering what action we ought to take on the pending motion, *it is in order to inquire what power the District Court would have had as to allowance of amendments had no appeals been taken to this court.* Rule 15(a), Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723c, provides:

"'(a) Amendments. A party may amend his pleading once as matter of course at any time before a responsive pleading is served or, if the pleading is [fol. 225] one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.'

"Apparently a motion to dismiss is not a 'responsive pleading' within the meaning of the rule. Cf. Rules 7(a) and 12(b). Therefore, by a literal reading of Rule 15(a) it might be argued that a plaintiff would be entitled as of right to one amendment of his complaint, without any limit of time, despite the filing of a motion to dismiss. However, *it could hardly have been intended that a plaintiff should have the right to amend without limit of time after a judgment of dismissal had been entered; nor could it have been intended that the trial court should have discretionary power for an unlimited time after such judgment of dismissal to vacate the judgment and allow an amendment of the complaint.* Such a construction of Rule 15(a) would be out of harmony with Rule 59(b) which narrowly limits the period within which a motion for a new trial can be made after the entry of judgment.

"Presumably the District Court has some discretionary power, after a judgment of dismissal, to vacate the judgment and to allow the filing of an amended complaint, even though the judgment does not expressly reserve leave to amend. See Earhart v. Valerius, D. C. W. D. Mo. 1938, 25 F. Supp. 754. But *it*

seems likely that this discretionary power to vacate [fol. 226] *the judgment of dismissal can be invoked only upon motion made within six months after its entry, as provided in Rule 60(b).* See Kroell v. New York Ambassador, Inc., 2 Cir., 1939, 108 F. 2d 294, 296. However, we need not decide this point at the present time.

"*If power would now lie in the District Court to allow an amendment except for the fact that the appeals are pending, the plaintiff could move in this court to dismiss its appeals, and thus restore the jurisdiction of the District Court.* Greene v. United Shoe Machinery Co., 1 Cir., 1903, 124 F. 961; Baltimore S. S. Co. v. Phillips, 2 Cir., 1925, 9 F. 2d 902, 903. Or, in the alternative, *we might upon request from the District Court remand the cases, which would amount to a dismissal of the appeals.* Roemer v. Simon 1875, 91 U. S. 149, 23 L. Ed. 267; Mossberg v. Nutter, 1 Cir., 1903, 124 F. 966; Cimiotti Unhairing Co. v. American Unhairing Machine Co., 2 Cir., 1903, 99 F. 1003.

"The procedure is discussed by the court in Baltimore S. S. Co. v. Phillips, supra, 9 F. 2d at page 903 as follows:

"'Of course, the appellant may always move to dismiss his appeal (Greene v. United, etc. Co. (1 Cir.), 124 F. 961, 60 C. C. A. 93), and no request is necessary for that purpose. *But in so doing he risks all on his case in the District Court, for it may be too late after decision for a new appeal.* Similarly, if on the appellant's motion the District Court asks for a remittitur before deciding the motion, as was apparently [fol. 227] the case in Mossberg v. Nutter (1 Cir.) 124 F. 966, 60 C. C. A. 98, and as the District Court did in the case at bar. *The safest way is for the District Court if disposed to entertain the motion at all, to ask leave of this court to do so. If this is given, it may proceed, the appeal still pending. Should it decide to reopen, it may then request remittitur, and the appellant will have risked nothing.* This was the course approved by the Circuit Court of Appeals for the Sixth Circuit in Meccano v. Wagner, 235 F. 890, and we also approve it. Sundh Elec. Co. v. Cutler-Hammer Mfg. Co. (2 Cir.), 244 F. 163, 170, 171, 156 C. C. A. 591.'

"But the foregoing is on the assumption, which we deem highly questionable here, that a motion for leave to amend the complaints would still be timely if the District Court should now reacquire jurisdiction of the cases by dismissal of the appeals. Taking, however, the other assumption, namely, that under Rule 60(b) the District Court could not vacate its judgments of dismissal for the purpose of allowing an amendment when motion for leave to amend is filed after the expiration of six months from the entry of the judgments, *the plaintiff would gain nothing by a simple remand of the cases to the District Court.*

"The plaintiff does not now ask for a dismissal of its appeals. Nor has the District Court requested us to remand the cases so that it might entertain motions for leave to amend the complaints. Nor does the plaintiff ask us now to review the record on the merits for the purpose of determining whether it contains any [fol. 228] error, and after such review to remand the cases for such further proceedings as justice might require. 28 U. S. C. A. Secs. 876, 877. Upon the contrary, *we are asked, without review of the merits in the exercise of our appellate power, to vacate the judgments below, and thus to remove the obstacle to the allowance of an amendment which the plaintiff rightly fears may exist in the terms of Rule 60(b). We are unable to find any such dispensing power in the Circuit Court of Appeals.* See Roemer v. Simon, 1895, 91 U. S. 149, 23 L. Ed. 267; Realty Acceptance Corp. v. Montgomery, 1932, 284 U. S. 547, 52 S. Ct. 215, 76 L. Ed. 476; Marden v. Campbell Printing-Press & Mfg. Co., 1 Cir., 1895, 67 F. 809. Even if we had such power, we should be disinclined to exercise it in the absence of a request by the District Court. And the case would have to be an extra-ordinary one indeed for us to exercise the power in the face of an express refusal of the court below, as here, to make the request. We perceive no such extraordinary circumstances in the cases now before us.

"The motion to vacate and remand is denied." (Emphasis ours.)

As in the case cited, this Honorable Court is asked without a review of merits in the exercise of the appellate

power, to vacate the judgment below and thus to remove the obstacle to the allowance of an amendment. Such dispensing power does not exist in the Circuit Court of Appeals under the authorities cited in the quotation above.

[fol. 229] II

The Proposed Amended Complaint Does Not Supply the Jurisdictional Deficiencies Existing in the Original Complaint.

The proposed amended complaint submitted by appellants drops the allegation of conspiracy contained in the original complaint. This is patently intended to meet the comment of this court upon the prior argument on the merits that Federal Officials as such could not conspire to do an unlawful act and that the allegation of such a conspiracy served to emphasize that the appellees were acting as individuals. There is no change of substance in the proposed amendment and it should be particularly noted that the allegation of concerted action remains (see appendix (A) of appellants' Brief in Support of Motion, p. 17). In paragraph 8 of the proposed amended complaint appears the following allegation:

> "All the defendants herein, at all times herein, acted in concert and pursuant to an understanding and agreement so to act, which said agreement and understanding was entered into by all of the defendants on or about December 16 or 17, 1942.
>
> "Some of the defendants, pursuant to said understanding and agreement committed the following acts, with respect to each of the plaintiffs, as follows:"

While appellants in the proposed amended complaint have changed their jurisdictional statement to such an extent as to amount almost to argument, there is no change in the factual matter alleged and upon which jurisdiction must be based. The substance and allegations of concerted action remain.

[fols. 230-231] The authorities submitted in appellees' brief in the original appeal are equally applicable to the proposed amended complaint which, however, is not properly before this court for review. The relief sought by appellants is putting the cart before the horse in that it requests the Circuit Court of Appeals to review and ap-

prove in advance a pleading which must necessarily be filed in the District Court and then only after leave in the district court has been obtained to permit its filing.

Conclusion

In opposition to appellants' motion appellees respectfully submit:

1. That the Circuit Court of Appeals is without the power to grant the relief sought by appellants;

2. That the remanding of the case to the District Court would be an idle act since Rule 60(b) F.R.C.P. would prevent the District Court from granting a motion for leave to file an amended complaint;

3. That the proposed amended complaint does not correct the deficiencies upon which the District Court based its ruling dismissing the original complaint.

Respectfully submitted, Charles H. Carr, United States Attorney; Ronald Walker, Assistant United States Attorney, Attorneys for Appellees.

[fol. 232] Supreme Court of the United States

Order Allowing Certiorari—Filed October 22, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.